



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 23 फरवरी, 2016 / 4 फाल्गुन, 1937

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 21st January, 2016

No: Sharm (A) 6-2/2014 (Awards) D/Shala.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour

Court D/Shala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr. No.	Ref. No.	Petitioner	Respondent	Date of Award/ Order
1.	05/14	Kartar Singh	Director of Research HPKVV	17-11-2015
2.	06/14	Tilak Raj	Director of Research HPKVV	17-11-2015
3.	07/14	Ashwani Kumar	Director of Research HPKVV	17-11-2015
4.	08/14	Rajesh Kumar	Director of Research HPKVV	17-11-2015
5.	09/14	Kamaljeet Chauhan	Director of Research HPKVV	17-11-2015
6.	14/14	Parveen Kumar	Director of Research HPKVV	17-11-2015
7.	106/14	Shammi Kumar	Director of Research HPKVV	17-11-2015
8.	107/14	Suresh Chand	Director of Research HPKVV	17-11-2015
9.	108/14	Parkash Chand	Director of Research HPKVV	17-11-2015
10.	168/13	Guddi Devi	E.E.HPPWD, Joginder Nagar	30-11-2015
11.	266/14	Vishal Kumar	R.M. HRTC, Chamba	30-11-2015
12.	01/15	Paras Ram	D.F.O. Chamba	30-11-2015
13.	02/15	Vias Dev	D.F.O. Chamba	30-11-2015
14.	343/14	Megh Raj	E.E. HPPWD, Kangra	30-11-2015
15.	247/13	Pamplu Ram	D.F.O. Suket	30-11-2015

By order,
Sd/-
Pr. Secretary (Lab. & Emp.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 05/2014
 Date of Institution : 04.01.2014
 Date of Decision : 17.11.2015

Shri Kartar Singh s/o Shri Achal Singh, r/o Village Ladho, P.O. Panchrukhi, Tehsil Palampur, District Kangra, H.P.Petitioner.

Versus

The Director of Research, Choudhery Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur, District Kangra, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Kartar Singh S/O Shri Achal Singh, R/O Village Ladho, P.O. Panchrukhi, Tehsil Palampur, District Kangra, H.P. w.e.f. 31.3.2012 vide order No. QSD/OA/CSKHPKV/206-56/257-85 dated 27.02.2012 by the Director of Research, Choudhery Sarwan Kumar, Himachal Pradesh Krishi Vishvavidyalaya, Palampur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been appointed by the respondent on daily wage basis w.e.f. April, 2002 who had been paid the daily rate as fixed by the State Govt. from time to time. It is alleged that petitioner had continuously worked without breaks with the Agro Forestry and Organic Agriculture department upto May, 2006 but while appointing him, no letter was issued and at the same time terms and conditions were not settled. Averments made in the claim petition further revealed that service condition of the petitioner had been changed by the respondent by engaging him as supporting staff in the same department on fixed salary w.e.f. June, 2006 instead of daily rate which he was receiving earlier and thus the petitioner continued to work under the Incharge of Agro Forestry and Organic Agriculture department upto 31st March, 2012. It further remains the case of petitioner that petitioner had completed 240 days in each calendar year w.e.f. April, 2002 to 31.3.2012 working with the same employer and was in continuous services envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called ‘the Act’ for brevity). It also remains the case of petitioner that respondent had not issued any attendance card, casual card or wage slip during period aforesaid besides maintained that the work and conduct of petitioner was found satisfactory who had been not given any chance for complaint to the management of respondent as well as to the Incharge or say head of department. The grievances of petitioner remains that the respondent had terminated service of petitioner along-with other similarly situated employees w.e.f. 31.3.2012 to 27.2.2012 vide letter no.QSD-DR-/4-13 (Tech) 2012/1951-53, dated 22nd March, 2012. It is alleged that even at the time of termination of the services, no retrenchment compensation envisaged under Section 25-F (b) of the Act was paid and thus termination without compliance of the above stated provision is null, void ab-initio. It is alleged that despite availability of works and funds with the department, services of the petitioner had been deliberately terminated without any misconduct on his part and thus the same was in violation of principle of natural justice. Averments made in the claim petition

also revealed that several persons junior to claimant/petitioner namely Vinod Kumar, Rajeev Kumar, Suresh Kumar, Krishan Kumar, Ashwani Kumar, Ashok Kumar, Om Prakash, Vipan Kumar and Ravinder Kumar had been retained in service and while doing the same, respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It also remains the case of the petitioner that after his termination, respondent had appointed fresh hands in place of petitioner namely Anurag Parmar, Santosh Kumar, Bablu, Om Prakash, Rattan Chand, Vinod Kumar, Rajeev Kumar and in this manner, petitioner had not been given an opportunity for reemployment and thus respondent had violated the provisions of Section 25-H of the Act. It is also alleged that petitioner had joined union in the year 2009 and due to union activities, petitioner's services had been unlawfully terminated by the respondent and thus act of respondent in terminating of services of petitioner was unfair labour practice as stipulated in Schedule Vth Clause 4 (a) and (b) of the Act. Not only this, petitioner also alleges discrimination on the part of respondent as one Kulwant Singh s/o Shri Nek Ram, r/o VPO Jhareth, Tehsil Palampur, District Kangra and Kartar Chand s/o Shri Hari Singh r/o Village Oder, P.O. Sungal, Tehsil Palampur, District Kangra were working on the post of supporting staff vide letter no. AFE/SKHPK/2003/KAR/206-21/1179-94 dated 19.6.2006 in the department of Agro Forestry and Environment and both these workmen have been regularized after completion of eight years of service. The grievances of petitioner also remains that one Kumari Promila Devi d/o Shali Ram who was appointed on contract basis on fixed salary too has been regularized as clerk in regular pay scale after completion of eight years of service of State Govt. vide letter no. 66984-97 dated 19.7.2010. Thus, claiming his termination, petitioner alleges arbitrariness and act of respondent as unconstitutional in violation of mandatory provisions of the Act which has been prayed to be set aside. Accordingly, petitioner claims that his termination vide order dated 27.2.2012 w.e.f. 31.3.2012 be set aside and quashed and respondent be directed to reinstate petitioner in service with seniority, continuity in service and full back wages alongwith consequential benefits including litigation costs quantified at Rs.10,000/- besides the petitioner has also prayed for regularization of service after completion of eight years of service in the regular pay scale.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections qua maintainability, locus standi, cause of action, jurisdiction, petitioner not falling within the definition of workman (diharidar) as he had never been engaged on muster roll basis in the records of the respondent university. It is specifically stipulated that the duties performed by petitioner were on contract basis for which bill of the work was raised and the same was paid at the rate not below the govt. rate. The petitioner is alleged to have been engaged for a particular period and **his employment was co-terminus with the project** and that petitioner while filing the claim petition has not approached the court with clean hands. On merits, respondent has asserted that according to policy of government of H.P. notified by Department of Finance order no. FIN.1-C(14)-1/83 dated 8.7.1998 adopted by university vide notification no. 1-2002/HPKV/97-78833-946 dated 13.11.1998 the policy/system to engage DPL i.e. daily paid labourer was banned. Thus, petitioner had never been engaged on daily paid labourer on muster roll basis in the year 2000 as has been claimed by him. It is also alleged that petitioner was engaged on contract basis in the year 2003 who used to raise bill of work performed and his wages were paid from the funds of project funded by ICAR/GOI and that no payment were paid from the grant-in-aid of the respondent university. It is alleged that the petitioner had been engaged on daily paid labourer on muster roll basis his name would have figured in the seniority list of university circulated in 2006 and later in the year 2008. It is further alleged that an ad-hoc project on Organic Farming in hill agriculture under the plan scheme (strengthening and development of agriculture education) Niche Area of Excellence was sanctioned to the respondent university by the Government of India in which some position of supporting staff (field workers) were provided on fixed project fellowship of Rs.2,500/- per month and these position for which the petitioner had applied and was selected and offered post of supporting staff vide letter no. AFE/CSKHPKV/2003/CAR-2006-21/1179-94 dated 19.6.2006 on terms and conditions contained therein. Thereafter, again advertised the position of supporting

staff/field helper on project fellowship of Rs.4000/- fixed per month for which petitioner had applied and selected and was offered post of field helper job. Thereafter, petitioner had applied offered appointment on monthly salary of Rs. 2500/- in the same department and petitioner/ claimant was notified termination of adhoc research project in which petitioner was last engaged the services of petitioner had been terminated on 31st March, 2012 afternoon after serving him notice dated 27.2.2012. It is alleged that petitioner served one month advance notice of termination of service before termination by the head of project in which he had been terminated. In so far as allegation of regularization of Kulwant Singh and Kartar Chand are concerned, respondent in his reply specifically alleged that their services had been regularized according to policy of State Govt. and both these official had worked since 1994. At the same time, Smt. Promila Devi d/o Sh. Shali Ram had been stated to be appointed data entry operator on contractual basis and her services had been regularized on the basis of policy framed by the govt. of H.P. vide letter no. PER (AP)-C-F(1)-1/2010 dated 7.5.2010 and as such case of petitioner had no direct nexus with Smt. Promila Devi. Thus, while denying cause of action as stated respondent has maintained that engagement of petitioner was co-terminus with the specific project in which he was appointed as supporting field staff on fixed monthly salary till completion of project and thus no provisions of the Industrial Disputes Act was stated to have been infringed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Manoj Kumar, the then Registrar, CSKHPKV, Palampur as RW1, RW2 Shri S.P. Sharma the Dean CSK HPKV Palampur tendered/proved his affidavit Ex. RW1/A and another affidavit Ex. RW2/A, letter dated 4.10.2007 Ex. RW1/B, Ex. RW1/C copy of letter dated 25.5.2009, Ex. RW1/D notification dated 13.11.1998, Ex. RW1/E copy of letter dated 8.7.1998, office order dated 17.2.1999 Ex. RW1/F, Ex. RW1/G copy of notification dated 26.4.1999, Ex. RW2/B copy of Award dated 30.6.2014 and closed the evidence.

7. I have heard the ld. counsel representing for the parties, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed by my ld. Predecessor on 27.02.2015 for determination:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 31.03.2012 is/was improper and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ...OPR.
4. Whether the petitioner has no locus standi to file the case as alleged? ...OPR.
5. Whether this court has no jurisdiction to file the present case as alleged? ...OPR.
6. Whether the claim petition is not maintainable in the present form? ...OPR.
7. Whether the petitioner has no cause of action to file the present case as alleged? ...OPR.

8. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? ...OPR.
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? ...OPR.
10. Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : No

Issue No. 6 : No

Issue No. 7 : No

Issue No. 8 : No

Issue No. 9 : No

Relief. : Claim petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that claimant/petitioner claims to have worked from year 2002 to 2006 as beldar (deharidar) as daily wage and thereafter from 2006 to 31.3.2012 in various projects of the respondent. Thus, claiming to have rendered more than 12 years of continuous service completing 240 days in each calendar year, the petitioner has alleged that he was illegally and unlawfully retrenched by the respondent. Before proceeding further, it would be apt to mention here that information under RTI Act Ex. P1was supplied which showed that petitioner had worked from January, 2006 to July 2006 **on work contract basis** and later he worked for 163 days **on fixed monthly salary basis co-terminus with the project**. It is admitted case of the parties that daily paid labourer had not been engaged by the respondent department after notification dated 21.4.1999 issued by Controller of HPKV Palampur. It is equally admitted case of the parties that name of the claimant/petitioner did not figure in the seniority list of daily wage workers although respondent had circulated tentative seniority list in the year 2006 which is Ex. RW1/B and thereafter final seniority list of daily wager worker/helpers as on 31.3.2008 Ex. RW1/C is final seniority list as on 31.3.2008in which the name of petitioner did not figure. It is equally admitted case of the petitioner that he had not raised any protest or objection qua not inclusion his name either of the list as aforesaid till date.

12. Ld. counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon**

Employees Union, in which Hon'ble Apex Court has held that non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act. I have gone through this judgment which is not applicable to present case as respondent had displayed as well as prepared seniority list per evidence on record and it is not material to consider at this stage reasons for non inclusion of the name of claimant/petitioner.

13. Ld. counsel for the petitioner has further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 95** titled as **Sudarshan Rajpoot vs. U.P. State Road Transport Corporation** in which Hon'ble Apex Court has dealt with aspect of termination of contractual appointment. In this case, it was held that respondent had failed to prove that the appellant was appointed on contractual basis by producing any cogent evidence. It was further held that even otherwise the appellant had worked for more than three years and 240 days in a year and his removal from service amounted to unfair labour practice. The case in hand clearly distinguishable from the case of Hon'ble Apex Court having different facts altogether before this court as petitioner is established to have worked initially on work contract basis and thereafter on fixed monthly salary. Needless to mention here that after the year 2006, the petitioner had applied time and again for seeking job of supporting field staff on fixed monthly salary and therefore he continued to be contractual employee and thus the judgment of **Sudarshan Rajpoot (2015) supra** would not be attracted in this case.

14. The crux of the problem which has cropped up for adjudication before by this court is to determine relationship between claimant/petitioner and the respondent. If petitioner is found to have worked on contractual basis as has been argued by ld. counsel for respondent, petitioner would not fall under the definition of the workman in view of specific provision envisaged under Section 2(oo) dealing with retrenchment as definition of workman is to be read with retrenchment of workman under Section 2(oo) of the Industrial Disputes Act. Section 2 (bb) provides the termination of services of workman with result of nonrenewal of contract of employment would not constitute retrenchment. In the case in hand, there is no reliable evidence on record establishing that the name of claimant/petitioner existed in muster roll and when he was engaged as field staff vide appointment offer vide Ex. RB dated 19.6.2006 subsequent offer of appointment as field staff dated 16.4.2010 Ex. RC and lastly vide Ex. RD it is established on record that petitioner had worked on contractual basis while accepting the offer of appointment by the respondent and in preceding 12 months he had not been engaged as daily wage basis. If petitioner had worked as supporting field staff and received fixed monthly salary from 2006 to 2012, then by no stretch of imagination, he would be falling in the definition of workman and at the same time, version of claimant/petitioner that he had worked regularly and competed 240 days cannot be relied. It would be also pertinent to mention here that the petitioner claimed to have worked on daily wage basis but vide Ex. P1 information furnished under RTI revealed that he had worked monthly on daily paid basis since year 2006. Thus, plea of petitioner to have been engaged by respondent as daily wage basis in 2000 gets falsified from document referred to above.

15. Ld. counsel for the respondent has taken through cross-examination of petitioner in which he has specifically admitted that while being employed as daily wage, he had not produced any record as he has claimed that the records was with the department. He has further admitted in cross-examination that his name was not sponsored by the employment exchange. He has shown ignorance if he had ever been engaged on muster roll but maintained that from very beginning he had been working with agro forestry and organic farming department. He has admitted in cross-examination that workmen whose name was entered in the muster roll invariably gets incorporated in the seniority list but no seniority list showing petitioner's name has been provided by his department. Significantly, he has admitted that correctness of seniority list prepared by the respondent/department as he has admitted in cross-examination that he did not raise any objection qua seniority list which had been circulated twice. Not only this, petitioner admitted that after 1998

university had not engaged any one as daily paid labourer, then how he was appointed or engaged in April, 2002 cannot be accepted as correct rather it falsified the claim of petitioner. It may pertinent to state here that petitioner had put his signature on Ex. RA bill voucher vide which he had received payment besides he has also admitted on oath that on 10th March, 2008 in pursuance to office order, he was appointed as supporting staff on monthly salary of Rs.3500/- on the basis of application submitted by him. Similarly, vide Ex. RB, Ex. RC petitioner was appointed on fixed monthly salary however vide Ex. RD his contract of employment was terminated consequent upon termination of project in which petitioner worked and other important aspect which goes to root of the case as admitted by the claimant/petitioner on oath is that all workmen similarly situated were being engaged through contractor which goes to show that respondent/employer had stopped direct recruitment and workmen were being supplied by the contractor.

16. Shri Manoj Kumar, registrar HPKV Palampur has shown his ignorance about the number of employees who have been regularized as he could speak so on being shown record. He has also shown his ignorance qua number of employees who were working contractual fixed monthly salary. He has further revealed in cross-examination that project ICAR was with the Central Government and he has admitted that no retrenchment compensation to the claimant/petitioner was paid but clarified that it was not required under the law. He has maintained that petitioner worked as seasonal worker in the project. On the point of regularization of Kulwant Singh and Kartar Singh this witness has clarified the same by stating that they had been engaged as daily waged workers and were regularized because they were working since 1994 and after 1998, no daily paid labourer were employed by the department. About Smt. Promila Devi RW1 has maintained that she was engaged as data entry operator on contractual basis on fixed amount as per Ex. P-2. RW1 in his cross-examination maintained that respondent had engaged Smt. Promila Devi was also casual worker and her regularization in pursuance to sanction from finance department.

17. In his affidavit RW2 Shri S.P. Sharma, Dean, CSK HPKV Palampur, District Kangra has stated that funding agencies was released budget under different heads such as salary head, non-recurring contingency and recurring contingency and labourers were engaged from time to time. Said Shri S.P. Sharma, RW2 also specifically stated that the appointment of claimant/petitioner was for a limited tenure. Even otherwise also, Ex. P4 statute of Choudhery Sarwan Kumar H.P. Krishi Vishvavidyalaya also defines ‘employees’ under rule 1.4 dealing with definition reads as under:-

“Employees means whole time employees (including officers and teachers) **other than part time employees, honorary employees or those paid from contingencies**”

18. Ld. counsel for respondent has contended with vehemence that even definition of ‘employees’ is defined under Statutes of University excludes part time employees and those paid from contingencies. RW2 Shri S.P. Sharma has stated in his affidavit that research projects are sanctioned for specified period and funding agencies provide funds for existing those projects. He has further stated that workmen/labourers are engaged in short term projects sanctioned by different funding agencies from time to time for scientific research and university has no control to extend the projects when its objectives are achieved or project is closed. Be it noticed that these facts on oath have remained un-repudiated. RW2 has also stated that project in which petitioner was appointed was closed on 31.3.2012.

19. In **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.**, the Hon’ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. Thus, there could not be relationship of deharidar/workman of claimant/petitioner

with respondent as salary and remuneration was paid and at the same time the name of claimant/petitioner did not appear in the muster roll as well as in the seniority list. As such, it could not be construed by any stretch of imagination that claimant/petitioner was beldar engaged on muster roll. Having not established to have worked as beldar on muster roll and respondent had succeeded in establishing that claimant/petitioner was appointed on fixed monthly salary, it would be unsafe to hold that respondent while terminating the services of petitioner had violated mandatory provisions of Section 25-F of the Industrial Disputes Act.

20. In so far as engagement of juniors to that of present claimant/petitioner is concerned, suffice would be state here that claimant/petitioner had not worked on muster roll basis and also not worked as beldar besides his name did not figure in the seniority list as observed forgoing paras. It cannot be stated that any person junior to petitioner had been retained in service and claimant/petitioner had been terminated. Thus, there is even no violation of the provisions of Section 25-G of the Industrial Disputes Act. At the same time, there can also be no violation of the provisions of Section 25-H of the Industrial Disputes Act as claimant/petitioner claimed that juniors have been engaged and he had not been offered for reemployment. At the cost of repetition, it may not be erroneous to state here that petitioner had not been appointed as beldar on muster roll whose name did not figure in the seniority list and therefore even if some new persons have been engaged, petitioner could not be stated to have been denied opportunity offer of employment within the meaning of Section 25-H of the Industrial Disputes Act.

21. Ld. Authorized Representative for the petitioner had relied upon the judgment of Hon'ble Apex Court reported in **2002 LLR 928** titled as **M/s. National Aluminum Co. Ltd. vs. Deepak Kumar Panda & Ors.** in which Hon'ble Apex Court observed that employee can legally enforce his right to continue in service particularly when junior to him were continuing to work. In the case in hand, it is not attracted as no juniors were proved to be working with the respondent. Authorized Representative for the claimant/petitioner further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** in which the Hon'ble Apex Court has held that non-preparation of seniority list or non-display of seniority list is breach of the provisions of Section 25-G of the Industrial Disputes Act. I have gone through the aforesaid judgment which would not be attracted in the case as the non-inclusion of the name of claimant/petitioner in the seniority list was due to he being on contractual appointment and was not required to be shown in the seniority list. Otherwise also, seniority list had been prepared twice by respondent which has been circulated from time to time but claimant/petitioner had never taken objection as he admitted in cross-examination and thus he is now estopped to challenge the correctness of seniority list.

22. Enough has emphasized by the Ld. Authorized Representative of claimant/petitioner on judgment of Hon'ble Apex Court reported in **2003 LLR 817** titled as **M/s. Bharat Heavy Electrical Limited vs. State of Uttar Pradesh & Ors.** in which Hon'ble Apex Court has held that non-production of records pertaining to payments made to the gardeners either by the company or the contractor will lead to drawing of adverse inference in establishing direct relationship of employer and employees between the principal employer and the workers alleged to be engaged by the contractor more so when photocopies for attendance and payments made have been produced by the gardeners. I have gone through this judgment but the case in hand, no record has been produced except the one bill by the claimant/petitioner. Be it noticed that respondent has fairly produced all relevant records concerning claimant/petitioner moreso when there has been no objection from side of petitioner that documents sought be produced have not been produced or withheld and as such judgment 2003 (supra) does not come to the rescue of the claimant/petitioner. For similar reason, judgment of Hon'ble Apex Court reported in **2015 LLR 785** titled as **Gauri Shanker vs. State of Rajasthan** relied upon by Ld. Authorized Representative is also not attracted in the facts and circumstances of the case. In view of the foregoing discussions keeping in view of

definition of workman as defined under Section 2(s) read with Section 2(oo) (bb) and other documentary evidence on record, claimant/petitioner has failed to prove that he was daily wage worker engaged by respondent as no muster roll was prepared qua his engagement and at the same time his name also did not figure in seniority list and as such it is further held that respondent had not violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Accordingly, issue no.1 is answered in negative and for similar reason issue no. 2 also answered in negative against the petitioner and in favour of respondent. In view of my findings foregoing paras, issue no.3 is answered in favour of respondent as it is not established that petitioner was daily paid worker of the respondent. Accordingly, issues no. 1 to 3 are decided in negative against the petitioner and in favour of respondent.

ISSUE NO.4

23. Ld. counsel for the respondent has raised the objection on the locus standi of the petitioner to sue but as the petitioner was employee of respondent whose services had been terminated, he could legitimately challenge the action of the respondent management had he succeeded in establishing that the action of respondent was illegal and unjustified. Thus, from facts on record, it cannot be stated that petitioner has no locus standi to sue respondent. Issue in hand is answered in negative in favour of petitioner and against the respondent.

ISSUE NO. 5

24. In view of what has been held under the foregoing issues, nothing has been brought of this court, as to how this Court has no jurisdiction to entertain the claim of the petitioner. Issue in hand is thus decided in negative and accordingly held in favour of the petitioner and against the respondent.

ISSUE NO. 6

25. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. counsel representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 7

26. In view of the findings on the above issues petitioner has cause of action, moreso when he alleged termination of service by respondent illegally. Hence, this issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 8

27. It is not shown as to how the petitioner has not come to the Court with clean hands. No evidence has been led on this issue. Therefore, this issue is decided accordingly.

ISSUE NO. 9

28. It is not shown by the respondent as to what facts have been withheld by the petitioner from the court. Neither any evidence has been led nor any submissions have been made in this behalf by the respondent. Hence, this issue is also decided against the respondent and in favour of the petitioner.

RELIEF

29. As a sequel to my findings on foregoing issues claim petition is dismissed, leaving the parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of November, 2015.

Sd/-
(K.K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 06/2014
Date of Institution : 04.01.2014
Date of Decision : 17.11.2015

Shri Tilak Raj s/o Shri Gian Chand, r/o Village Garla Sarkari, P.O. Garla Dei, Tehsil Palampur, District Kangra, H.P.Petitioner.

Versus

The Director of Research, Choudhery Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur, District Kangra, H.P.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Tilak Raj S/O Shri Gian Chand, R/O Village Garla Sarkari, P.O. Garla Dei, Tehsil Palampur, District Kangra, H.P. w.e.f. 31.03.2012 vide order No. QSD/OA/CSKHPKV/206-56/257-85 dated 27.02.2012 by the Director of

Research, Choudhery Sarwan Kumar, Himachal Pradesh Krishi Vishvavidyalaya, Palampur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been appointed by the respondent on daily wage basis w.e.f. April, 2000 who had been paid the daily rate as fixed by the State Govt. from time to time. It is alleged that petitioner had continuously worked without breaks with the Agro Forestry and Organic Agriculture department upto May, 2006 but while appointing him, no letter was issued and at the same time terms and conditions were not settled. Averments made in the claim petition further revealed that service condition of the petitioner had been changed by the respondent by engaging him as supporting staff in the same department on fixed salary w.e.f. June, 2006 instead of daily rate which he was receiving earlier and thus the petitioner continued to work under the Incharge of Agro Forestry and Organic Agriculture department upto 31st March, 2012. It further remains the case of petitioner that petitioner had completed 240 days in each calendar year w.e.f. April, 2000 to 31.3.2012 working with the same employer and was in continuous services envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). It also remains the case of petitioner that respondent had not issued any attendance card, casual card or wage slip during period aforesaid besides maintained that the work and conduct of petitioner was found satisfactory who had been not given any chance for complaint to the management of respondent as well as to the Incharge or say head of department. The grievances of petitioner remains that the respondent had terminated service of petitioner along-with other similarly situated employees w.e.f. 31.3.2012 to 27.2.2012 vide letter no.QSD-DR-/4-13 (Tech) 2012/1951-53, dated 22nd March, 2012. It is alleged that even at the time of termination of the services, no retrenchment compensation envisaged under Section 25-F (b) of the Act was paid and thus termination without compliance of the above stated provision is null, void ab-initio. It is alleged that despite availability of works and funds with the department, services of the petitioner had been deliberately terminated without any misconduct on his part and thus the same was in violation of principle of natural justice. Averments made in the claim petition also revealed that several persons junior to claimant/petitioner namely Vinod Kumar, Rajeev Kumar, Suresh Kumar, Krishan Kumar, Ashwani Kumar, Ashok Kumar, Om Prakash, Vipan Kumar and Ravinder Kumar had been retained in service and while doing the same, respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It also remain the case of the petitioner that after his termination, respondent had appointed fresh hands in place of petitioner namely Anurag Parmar, Santosh Kumar, Bablu, Om Prakash, Rattan Chand, Vinod Kumar, Rajeev Kumar and in this manner, petitioner had not been given an opportunity for reemployment and thus respondent had violated the provisions of Section 25-H of the Act. It is also alleged that petitioner had joined union in the year 2009 and due to union activities, petitioner's services had been unlawfully terminated by the respondent and thus act of respondent in terminating of services of petitioner was unfair labour practice as stipulated in Schedule Vth Clause 4 (a) and (b) of the Act. Not only this, petitioner also alleges discrimination on the part of respondent as one Kulwant Singh s/o Shri Nek Ram, r/o VPO Jhareth, Tehsil Palampur, District Kangra and Kartar Chand s/o Shri Hari Singh r/o Village Oder, P.O. Sungal, Tehsil Palampur, District Kangra were working on the post of supporting staff vide letter no. AFE/SKHPK/2003/KAR/206-21/1179-94 dated 19.6.2006 in the department of Agro Forestry and Environment and both these workmen have been regularized after completion of eight years of service. The grievances of petitioner also remains that one Kumari Promila Devi d/o Shali Ram who was appointed on contract basis on fixed salary too has been regularized as clerk in regular pay scale after completion of eight years of service of State Govt. vide letter no. 66984-97 dated

19.7.2010. Thus, claiming his termination, petitioner alleges arbitrariness and act of respondent as unconstitutional in violation of mandatory provisions of the Act which has been prayed to be set aside. Accordingly, petitioner claims that his termination vide order dated 27.2.2012 w.e.f. 31.3.2012 be set aside and quashed and respondent be directed to reinstate petitioner in service with seniority, continuity in service and full back wages alongwith consequential benefits including litigation costs quantified at Rs.10,000/- besides the petitioner has also prayed for regularization service after completion of eight years of service in the regular pay scale.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections qua maintainability, locus standi, cause of action, jurisdiction, petitioner not falling within the definition of workman (diharidar) as he had never been engaged on muster roll basis in the records of the respondent university. It is specifically stipulated that the duties performed by petitioner were on contract basis for which bill of the work was raised and the same was paid at the rate not below the govt. rate. The petitioner is alleged to have been engaged for a particular period and **his employment was co-terminus with the project** and that petitioner while filing the claim petition has not approached the court with clean hands. On merits, respondent has asserted that according to policy of government of H.P. notified by Department of Finance order no. FIN.1-C(14)-1/83 dated 8.7.1998 adopted by university vide notification no. 1-2002/HPKV/97-78833-946 dated 13.11.1998 the policy/system to engage DPL i.e. daily paid labourer was banned. Thus, petitioner had never been engaged on daily paid labourer on muster roll basis in the year 2000 as has been claimed by him. It is also alleged that petitioner was engaged on contract basis in the year 2003 who used to raise bill of work performed and his wages were paid from the funds of project funded by ICAR/GOI and that no payment were paid from the grant-in-aid of the respondent university. It is alleged that the petitioner had been engaged on daily paid labourer on muster roll basis his name would have figured in the seniority list of university circulated in 2006 and later in the year 2008. It is further alleged that an ad-hoc project on Organic Farming in hill agriculture under the plan scheme (strengthening and development of agriculture education) Niche Area of Excellence was sanctioned to the respondent university by the Government of India in which some position of supporting staff (field workers) were provided on fixed project fellowship of Rs.2,500/- per month and these position for which the petitioner had applied and was selected and offered post of supporting staff vide letter no. AFE/CSKHPKV/2003/CAR-2006-21/1179-94 dated 19.6.2006 on terms and conditions contained therein. Thereafter, again advertised the position of supporting staff/field helper on project fellowship of Rs.4000/- fixed per month for which petitioner had applied and selected and was offered post of field helper job. Thereafter, petitioner had applied offered appointment on monthly salary of Rs.2500/- in the same department and petitioner/claimant was notified termination of adhoc research project in which petitioner was last engaged the services of petitioner had been terminated on 31st March, 2012 afternoon after serving him notice dated 27.2.2012. It is alleged that petitioner served one month advance notice of termination of service before termination by the head of project in which he had been terminated. In so far as allegation of regularization of Kulwant Singh and Kartar Chand are concerned, respondent in his reply specifically alleged that their services had been regularized according to policy of State Govt. and both these official had worked since 1994. At the same time, Smt. Promila Devi d/o Sh. Shali Ram had been stated to be appointed data entry operator on contractual basis and her services had been regularized on the basis of policy framed by the govt. of H.P. vide letter no. PER (AP)-C-F(1)-1/2010 dated 7.5.2010 and as such case of petitioner had no direct nexus with Smt. Promila Devi. Thus, while denying cause of action as stated respondent has maintained that engagement of petitioner was co-terminus with the specific project in which he was appointed as supporting field staff on fixed monthly salary till completion of project and thus no provisions of the Industrial Disputes Act was stated to have been infringed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Manoj Kumar, the then Registrar, CSKHPKV, Palampur as RW1, RW2 Shri S.P. Sharma the Dean CSK HPKV Palampur tendered/proved his affidavit Ex. RW1/A, letter dated 4.10.2007 Ex. RW1/B, Ex. RW1/C copy of letter dated 25.5.2009, Ex. RW1/D notification dated 13.11.1998, Ex. RW1/E copy of letter dated 8.7.1998, office order dated 17.2.1999 Ex. RW1/F, Ex. RW2/B copy of Award dated 30.6.2014 and closed the evidence.

7. I have heard the ld. counsel representing for the parties, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed by my ld. Predecessor on 27.02.2015 for determination:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 31.03.2012 is/was improper and unjustified as alleged? ...OPP.
 2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...OPP.
 3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ...OPR.
 4. Whether the petitioner has no locus standi to file the case as alleged? ...OPR.
 5. Whether this court has no jurisdiction to file the present case as alleged? ...OPR.
 6. Whether the claim petition is not maintainable in the present form? ...OPR.
 7. Whether the petitioner has no cause of action to file the present case as alleged? ...OPR.
 8. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? ...OPR.
 9. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? ...OPR.
 10. Relief.
9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : No

Issue No. 6 : No

Issue No. 7 : No

Issue No. 8 : No

Issue No. 9 : No

Relief. : Claim petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that claimant/petitioner claims to have worked from year 2000 to 2006 as beldar (deharidar) on daily wage and thereafter from 2006 to 31.3.2012 in various projects of the respondent. Thus, claiming to have rendered more than 12 years of continuous service completing 240 days in each calendar year, the petitioner has alleged that he was illegally and unlawfully retrenched by the respondent. Before proceeding further, it would be apt to mention here that information under RTI Act Ex. P1was supplied which showed that petitioner had worked from 2003 to 2006 **on work contract basis** and later he worked for 175 days, 356 days, 321 days and 173 days **on fixed monthly salary basis co-terminus with the project**. It is admitted case of the parties that daily paid labourer had not been engaged by the respondent department after notification dated 21.4.1999 issued by Controller of HPKV Palampur. It is equally admitted case of the parties that name of the claimant/petitioner did not figure in the seniority list of daily wage workers although respondent had circulated tentative seniority list in the year 2006 which is Ex. RW1/B and thereafter final seniority list of daily wager worker/helpers as on 31.3.2008 Ex. RW1/C is final seniority list as on 31.3.2008 in which the name of petitioner did not figure. It is equally admitted case of the petitioner that he has not raised any protest or objection qua not inclusion his name either of the list as aforestated till date.

12. Ld. counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union**, in which Hon'ble Apex Court has held that non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act. I have gone through this judgment which is not applicable to present case as respondent had displayed as well as prepared seniority list per evidence on record and it is not material to consider at this stage reasons for non inclusion of the name of claimant/petitioner.

13. Ld. counsel for the petitioner has further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 95** titled as **Sudarshan Rajpoot vs. U.P. State Road Transport Corporation** in which Hon'ble Apex Court has dealt with aspect of termination of contractual appointment. In this case, it was held that respondent had failed to prove that the appellant was appointed on contractual basis by producing any cogent evidence. It was further held that even otherwise the appellant had worked for more than three years and 240 days in a year and his removal from service amounted to unfair labour practice. The case in hand clearly distinguishable from the case of Hon'ble Apex Court having different facts altogether before this court as petitioner is established to have worked initially on work contract basis and thereafter on fixed monthly salary. Needless to mention here that after the year 2006, the petitioner had applied time and again

for seeking job of supporting field staff on fixed monthly salary and therefore he continued to be contractual employee and thus the judgment of **Sudarshan Rajpoot (2015) supra** would not be attracted in this case.

14. The crux of the problem which has cropped up for adjudication before by this court is to determine relationship between claimant/petitioner and the respondent. If petitioner is found to have worked on contractual basis as has been argued by ld. counsel for respondent, petitioner would not fall under the definition of the workman in view of specific provision envisaged under Section 2(oo) dealing with retrenchment as definition of workman is to be read with retrenchment of workman under Section 2(oo) of the Industrial Disputes Act. Section 2 (bb) provides the termination of services of workman with result of nonrenewal of contract of employment would not constitute retrenchment. In the case in hand, there is no reliable evidence on record establishing that the name of claimant/petitioner existed in muster roll and when he was engaged as field staff vide appointment offer vide Ex. RB dated 19.6.2006 subsequent offer of appointment as field staff dated 16.4.2010 Ex. RC and lastly vide Ex. RD it is established on record that petitioner had worked on contractual basis while accepting the offer of appointment by the respondent and in preceding 12 months he had not been engaged as daily wage basis. If petitioner had worked as supporting field staff and received fixed monthly salary from 2006 to 2012, then by no stretch of imagination, he would be falling in the definition of workman and at the same time, version of claimant/petitioner that he had worked regularly and completed 240 days cannot be relied. It would be also pertinent to mention here that the petitioner claimed to have worked on daily wage basis but vide Ex. P1 information furnished under RTI revealed that he had worked monthly on daily paid basis since year 2003. Thus, plea of petitioner to have been engaged by respondent as daily wage basis in 2000 gets falsified from document referred to above.

15. Ld. counsel for the respondent has taken through cross-examination of petitioner in which he has specifically admitted that while being employed as daily wage, he had not produced any record as he has claimed that the records was with the department. He has further admitted in cross-examination that his name was not sponsored by the employment exchange. He has shown ignorance if he had ever been engaged on muster roll but maintained that from very beginning he had been working with agro forestry and organic farming department. He has admitted in cross-examination that workmen whose name was entered in the muster roll invariably gets incorporated in the seniority list but no seniority list showing petitioner's name has been provided by his department. Significantly, he has admitted that correctness of seniority list prepared by the respondent/department as he has admitted in cross-examination that he did not raise any objection qua seniority list which had been circulated twice. Not only this, petitioner admitted that after 1998 university had not engaged any one as daily paid labourer, then how he was appointed or engaged in April, 2000 cannot be accepted as correct rather it falsified the claim of petitioner. It may pertinent to state here that petitioner had put his signature on Ex. RA bill voucher vide which he had received payment besides he has also admitted on oath that on 10th March, 2008 in pursuance to office order, he was appointed as supporting staff on monthly salary of Rs.3500/- on the basis of application submitted by him. Similarly, vide Ex. RB, Ex. RC petitioner was appointed on fixed monthly salary however vide Ex. RD his contract of employment was terminated consequent upon termination of project in which petitioner worked and other important aspect which goes to root of the case as admitted by the claimant/petitioner on oath is that all workmen similarly situated were being engaged through contractor which goes to show that respondent/employer had stopped direct recruitment and workmen were being supplied by the contractor.

16. Shri Manoj Kumar, registrar HPKV Palampur has shown his ignorance about the number of employees who have been regularized as he could speak so on being shown record. He has also shown his ignorance qua number of employees who were working contractual fixed monthly salary. He has further revealed in cross-examination that project ICAR was with the

Central Government and he has admitted that no retrenchment compensation to the claimant/petitioner was paid but clarified that it was not required under the law. He has maintained that petitioner worked as seasonal worker in the project. On the point of regularization of Kulwant Singh and Kartar Singh this witness has clarified the same by stating that they had been engaged as daily waged workers and were regularized because they were working since 1994 and after 1998, no daily paid labourer were employed by the department. About Smt. Promila Devi RW1 has maintained that she was engaged as data entry operator on contractual basis on fixed amount as per Ex. P-2. RW1 in his cross-examination maintained that respondent had engaged Smt. Promila Devi was also casual worker and her regularization in pursuance to sanction from finance department.

17. In his affidavit RW2 Shri S.P. Sharma, Dean, CSK HPKV Palampur, District Kangra has stated that funding agencies was released budget under different heads such as salary head, non-recurring contingency and recurring contingency and labourers were engaged from time to time. Said Shri S.P. Sharma, RW2 also specifically stated that the appointment of claimant/petitioner was for a limited tenure. Even otherwise also, Ex. P4 statute of Choudhery Sarwan Kumar H.P. Krishi Vishvavidyalaya also defines '**employees**' under Rule 1.4 dealing with definition which reads as under:-

“Employees means whole time employees (including officers and teachers) **other than part time employees, honorary employees or those paid from contingencies**”

18. Ld. counsel for respondent has contended with vehemence that even definition of 'employees' is defined under Statutes of University excludes part time employees and those paid from contingencies. RW2 Shri S.P. Sharma has stated in his affidavit that research projects are sanctioned for specified period and funding agencies provide funds for existing those projects. He has further stated that workmen/labourers are engaged in short term projects sanctioned by different funding agencies from time to time for scientific research and university has no control to extend the projects when its objectives are achieved or project is closed. Be it noticed that these facts on oath have remained un-repudiated. RW2 has also stated that project in which petitioner was appointed was closed on 31.3.2012.

19. In **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.**, the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. Thus, there could not be relationship of deharidar/workman of claimant/petitioner with respondent as salary and remuneration was paid and at the same time the name of claimant/petitioner did not appear in the muster roll as well as in the seniority list. As such, it could not be construed by any stretch of imagination that claimant/petitioner was beldar engaged on muster roll. Having not established to have worked as beldar on muster roll and respondent had succeeded in establishing that claimant/petitioner was appointed on fixed monthly salary, it would be unsafe to hold that respondent while terminating the services of petitioner had violated mandatory provisions of Section 25-F of the Industrial Disputes Act.

20. In so far as engagement of juniors to that of present claimant/petitioner is concerned, suffice would be state here that claimant/petitioner had not worked on muster roll basis and also not worked as beldar besides his name did not figure in the seniority list as observed forgoing paras. It cannot be stated that any person junior to petitioner had been retained in service and claimant/petitioner had been terminated. Thus, there is even no violation of the provisions of Section 25-G of the Industrial Disputes Act. At the same time, there can also be no violation of the provisions of Section 25-H of the Industrial Disputes Act as claimant/petitioner claimed that juniors have been engaged and he had not been offered for reemployment. At the cost of repetition, it may

not be erroneous to state here that petitioner had not been appointed as beldar on muster roll whose name did not figure in the seniority list and therefore even if some new persons have been engaged, petitioner could not be stated to have been denied opportunity offer of employment within the meaning of Section 25-H of the Industrial Disputes Act.

21. Ld. Authorized Representative for the petitioner had relied upon the judgment of Hon'ble Apex Court reported in **2002 LLR 928** titled as **M/s. National Aluminum Co. Ltd. vs. Deepak Kumar Panda & Ors.** in which Hon'ble Apex Court observed that employee can legally enforce his right to continue in service particularly when junior to him were continuing to work. In the case in hand, it is not attracted as no juniors were proved to be working with the respondent. Authorized Representative for the claimant/petitioner further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** in which the Hon'ble Apex Court has held that non-preparation of seniority list or non-display of seniority list is breach of the provisions of Section 25-G of the Industrial Disputes Act. I have gone through the aforesaid judgment which would not be attracted in the case as the non inclusion of the name of claimant/petitioner in the seniority list was due to he being on contractual appointment and was not required to be shown in the seniority list. Otherwise also, seniority list had been prepared twice by respondent which has been circulated from time to time but claimant/petitioner had never taken objection as he admitted in cross-examination and thus he is now estopped to challenge the correctness of seniority list.

22. Enough has emphasized by the Ld. Authorized Representative of claimant/petitioner on judgment of Hon'ble Apex Court reported in **2003 LLR 817** titled as **M/s. Bharat Heavy Electrical Limited vs. State of Uttar Pradesh & Ors.** in which Hon'ble Apex Court has held that non production of records pertaining to payments made to the gardeners either by the company or the contractor will lead to drawing of adverse inference in establishing direct relationship of employer and employees between the principal employer and the workers alleged to be engaged by the contractor more so when photocopies for attendance and payments made have been produced by the gardeners. I have gone through this judgment but the case in hand no record has been **produced except the one bill by the claimant/petitioner**. Be it noticed that respondent has fairly produced all relevant records concerning claimant/petitioner more so when there has been no objection from side of petitioner that documents sought be produced have not been produced or withheld and as such judgment 2003 (supra) does not come to the rescue of the claimant/petitioner. For similar reason, judgment of Hon'ble Apex Court reported in **2015 LLR 785** titled as **Gauri Shanker vs. State of Rajasthan** relied upon by Ld. Authorized Representative is also not attracted in the facts and circumstances of the case. In view of the foregoing discussions keeping in view of definition of workman as defined under Section 2(s) read with Section 2(oo) (bb) and other documentary evidence on record, claimant/petitioner has failed to prove that he was daily wage worker engaged by respondent as no muster roll was prepared qua his engagement and at the same time his name also did not figure in seniority list and as such it is held that respondent had not violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Accordingly, issue no.1 is answered in negative and for similar reason issue no. 2 also answered in negative against the petitioner and in favour of respondent. In view of my findings foregoing paras, issue no.3 is answered in favour of respondent as it is not established that petitioner was daily paid worker of the respondent. Accordingly, issues no. 1 to 3 are decided in negative against the petitioner and in favour of respondent.

ISSUE NO. 4

23. Ld. counsel for the respondent has raised the objection on the locus standi of the petitioner to sue but as the petitioner was employee of respondent whose services had been terminated, he could legitimately challenge the action of the respondent management had he

succeeded in establishing that the action of respondent was illegal and unjustified. Thus, from facts on record, it cannot be stated that petitioner has no locus standi to sue respondent. Issue in hand is answered in negative in favour of petitioner and against the respondent.

ISSUE NO.5

24. In view of what has been held under the foregoing issues, nothing has been brought of this court, as to how this Court has no jurisdiction to entertain the claim of the petitioner. Issue in hand is thus decided in negative and accordingly held in favour of the petitioner and against the respondent.

ISSUE NO.6

25. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. counsel representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.7

26. In view of the findings on the above issues petitioner has cause of action, moreso when he alleged termination of service by respondent illegally. Hence, this issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.8

27. It is not shown as to how the petitioner has not come to the Court with clean hands. No evidence has been led on this issue. Therefore, this issue is decided accordingly.

ISSUE NO.9

28. It is not shown by the respondent as to what facts have been withheld by the petitioner from the court. Neither any evidence has been led nor any submissions have been made in this behalf by the respondent. Hence, this issue is also decided against the respondent and in favour of the petitioner.

RELIEF

29. As a sequel to my findings on foregoing issues claim petition is dismissed, leaving the parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of November, 2015.

Sd/-

(K.K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 07/2014
 Date of Institution : 04.01.2014
 Date of Decision : 17.11.2015

Shri Ashwani Kumar s/o Shri Madho Ram, r/o Village and P.O. Banuri, Tehsil Palampur,
 District Kangra, H.P.Petitioner.

Versus

The Director of Research, Choudhery Sarwan Kumar Himachal Pradesh Krishi
 Vishvavidyalaya, Palampur, District Kangra, H.P.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Ashwani Kumar S/O Shri Madho Ram, R/O Village and P.O. Banuri, Tehsil Palampur, District Kangra, H.P. w.e.f. 31.03.2012 vide order No.QSD/OA/CSKHPKV/206-56/257-85 dated 27.02.2012 by the Director of Research, Choudhery Sarwan Kumar, Himachal Pradesh Krishi Vishvavidyalaya, Palampur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been appointed by the respondent on daily wage basis w.e.f. April, 2000 who had been paid the daily rate as fixed by the State Govt. from time to time. It is alleged that petitioner had continuously worked without breaks with the Agro Forestry and Organic Agriculture department upto March, 2009 but while appointing him, no letter was issued and at the same time terms and conditions were not settled. Averments made in the claim petition further revealed that service condition of the petitioner had been changed by the respondent by engaging him as supporting staff in the same department on fixed salary w.e.f. April, 2009 instead of daily rate which he was receiving earlier and thus the petitioner continued to work under the Incharge of Agro Forestry and Organic Agriculture department upto 31st March, 2012. It further remains the case of petitioner that petitioner had completed 240 days in each calendar year w.e.f. April, 2000 to 31.3.2012 working with the same employer and was in continuous services envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called ‘the Act’ for brevity). It also remains the case of petitioner that respondent had not issued any attendance card, casual card or wage slip during period aforesaid

besides maintained that the work and conduct of petitioner was found satisfactory who had been not given any chance for complaint to the management of respondent as well as to the Incharge or say head of department. The grievances of petitioner remains that the respondent had terminated service of petitioner along-with other similarly situated employees w.e.f. 31.3.2012 to 27.2.2012 vide letter no.QSD-DR-/4-13 (Tech) 2012/1951-53, dated 22nd March, 2012. It is alleged that even at the time of termination of the services, no retrenchment compensation envisaged under Section 25-F (b) of the Act was paid and thus termination without compliance of the above stated provision is null, void ab-initio. It is alleged that despite availability of works and funds with the department, services of the petitioner had been deliberately terminated without any misconduct on his part and thus the same was in violation of principle of natural justice. Averments made in the claim petition also revealed that several persons junior to claimant/petitioner namely Vinod Kumar, Rajeev Kumar, Suresh Kumar, Krishan Kumar, Ashwani Kumar, Ashok Kumar, Om Prakash, Vipan Kumar and Ravinder Kumar had been retained in service and while doing the same, respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It also remain the case of the petitioner that after his termination, respondent had appointed fresh hands in place of petitioner namely Anurag Parmar, Santosh Kumar, Bablu, Om Prakash, Rattan Chand, Vinod Kumar, Rajeev Kumar and in this manner, petitioner had not been given an opportunity for reemployment and thus respondent had violated the provisions of Section 25-H of the Act. It is also alleged that petitioner had joined union in the year 2009 and due to union activities, petitioner's services had been unlawfully terminated by the respondent and thus act of respondent in terminating of services of petitioner was unfair labour practice as stipulated in Schedule Vth Clause 4 (a) and (b) of the Act. Not only this, petitioner also alleges discrimination on the part of respondent as one Kulwant Singh s/o Shri Nek Ram, r/o VPO Jhareth, Tehsil Palampur, District Kangra and Kartar Chand s/o Shri Hari Singh r/o Village Oder, P.O. Sungal, Tehsil Palampur, District Kangra were working on the post of supporting staff vide letter no. AFE/SKHPK/2003/KAR/206-21/1179-94 dated 19.6.2006 in the department of Agro Forestry and Environment and both these workmen have been regularized after completion of eight years of service. The grievances of petitioner also remains that one Kumari Promila Devi d/o Shali Ram who was appointed on contract basis on fixed salary too has been regularized as clerk in regular pay scale after completion of eight years of service of State Govt. vide letter no. 66984-97 dated 19.7.2010. Thus, claiming his termination, petitioner alleges arbitrariness and act of respondent as unconstitutional in violation of mandatory provisions of the Act which has been prayed to be set aside. Accordingly, petitioner claims that his termination vide order dated 27.2.2012 w.e.f. 31.3.2012 be set aside and quashed and respondent be directed to reinstate petitioner in service with seniority, continuity in service and full back wages alongwith consequential benefits including litigation costs quantified at Rs.10,000/- besides the petitioner has also prayed for regularization service after completion of eight years of service in the regular pay scale.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections qua maintainability, locus standi, cause of action, jurisdiction, petitioner not falling within the definition of workman (diharidar) as he had never been engaged on muster roll basis in the records of the respondent university. It is specifically stipulated that the duties performed by petitioner were on contract basis for which bill of the work was raised and the same was paid at the rate not below the govt. rate. The petitioner is alleged to have been engaged for a particular period and **his employment was co-terminus with the project** and that petitioner while filing the claim petition has not approached the court with clean hands. On merits, respondent has asserted that according to policy of government of H.P. notified by Department of Finance order no. FIN.1-C(14)-1/83 dated 8.7.1998 adopted by university vide notification no. 1-2002/HPKV/97-78833-946 dated 13.11.1998 the policy/system to engage DPL i.e. daily paid labourer was banned. Thus, petitioner had never been engaged on daily paid labourer on muster roll basis in the year 2000 as has been claimed by him. It is also alleged that petitioner was engaged on contract basis in the year 2003 who used to raise bill of work performed and his wages were paid from the funds of project

funded by ICAR/GOI and that no payment were paid from the grant-in-aid of the respondent university. It is alleged that the petitioner had been engaged on daily paid labourer on muster roll basis his name would have figured in the seniority list of university circulated in 2006 and later in the year 2008. It is further alleged that an ad-hoc project on Organic Farming in hill agriculture under the plan scheme (strengthening and development of agriculture education) Niche Area of Excellence was sanctioned to the respondent university by the Government of India in which some position of supporting staff (field workers) were provided on fixed project fellowship of Rs.2,500/- per month and these position for which the petitioner had applied and was selected and offered post of supporting staff vide letter no. AFE/CSKHPKV/2003/CAR-2006-21/1179-94 dated 19.6.2006 on terms and conditions contained therein. Thereafter, again advertised the position of supporting staff/field helper on project fellowship of Rs.4000/- fixed per month for which petitioner had applied and selected and was offered post of field helper job. Thereafter, petitioner had applied offered appointment on monthly salary of Rs.2500/- in the same department and petitioner/claimant was notified termination of adhoc research project in which petitioner was last engaged the services of petitioner had been terminated on 31st March, 2012 afternoon after serving him notice dated 27.2.2012. It is alleged that petitioner served one month advance notice of termination of service before termination by the head of project in which he had been terminated. In so far as allegation of regularization of Kulwant Singh and Kartar Chand are concerned, respondent in his reply specifically alleged that their services had been regularized according to policy of State Govt. and both these official had worked since 1994. At the same time, Smt. Promila Devi d/o Sh. Shali Ram had been stated to be appointed data entry operator on contractual basis and her services had been regularized on the basis of policy framed by the govt. of H.P. vide letter no. PER (AP)-C-F(1)-1/2010 dated 7.5.2010 and as such case of petitioner had no direct nexus with Smt. Promila Devi. Thus, while denying cause of action as stated respondent has maintained that engagement of petitioner was co-terminus with the specific project in which he was appointed as supporting field staff on fixed monthly salary till completion of project and thus no provisions of the Industrial Disputes Act was stated to have been infringed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Manoj Kumar, the then Registrar, CSKHPKV, Palampur as RW1, RW2 Shri S.P. Sharma the Dean CSK HPKV Palampur tendered/proved his affidavit Ex. RW1/A and another affidavit Ex. RW2/A, letter dated 4.10.2007 Ex. RW1/B, Ex. RW1/C copy of letter dated 25.5.2009, Ex. RW1/D notification dated 13.11.1998, Ex. RW1/E copy of letter dated 8.7.1998, office order dated 17.2.1999 Ex. RW1/F, Ex. RW1/G notification dated 26.4.1999, Ex. RW1/H copy of letter dated 19.6.2006, Ex. RW2/B copy of Award dated 30.6.2014 and closed the evidence.

7. I have heard the ld. counsel representing for the parties, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed by my ld. Predecessor on 27.02.2015 for determination:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 31.03.2012 is/was improper and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ...OPR.

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4. Whether the petitioner has no locus standi to file the case as alleged? ...OPR.
5. Whether this court has no jurisdiction to file the present case as alleged? ...OPR.
6. Whether the claim petition is not maintainable in the present form? ...OPR.
7. Whether the petitioner has no cause of action to file the present case as alleged? ...OPR.
8. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? ...OPR.
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? ...OPR.
10. Relief.
9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : Yes

Issue No.5 : No

Issue No.6 : No

Issue No.7 : No

Issue No.8 : No

Issue No.9 : No

Relief. : Claim petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that claimant/petitioner claims to have worked from year 2000 to 2009 as beldar (deharidar) as daily wage and thereafter from 2009 to 31.3.2012 in various projects of the respondent. Thus, claiming to have rendered more than 12 years of continuous service completing 240 days in each calendar year, the petitioner has alleged that he was illegally and unlawfully retrenched by the respondent. Before proceeding further, it would be apt to mention here that information under RTI Act Ex. P1was supplied which showed that

petitioner had worked from 2003 to 2006 **on work contract basis** and later he worked for 184 days, 329 days, 262 days and 262 days **on fixed monthly salary basis co-terminus with the project.** It is admitted case of the parties that daily paid labourer had not been engaged by the respondent department after notification dated 21.4.1999 issued by Controller of HPKV Palampur. It is equally admitted case of the parties that name of the claimant/petitioner did not figure in the seniority list of daily wage workers although respondent had circulated tentative seniority list in the year 2006 which is Ex. RW1/B and thereafter final seniority list of daily wager worker/helpers as on 31.3.2008 Ex. RW1/C is final seniority list as on 31.3.2008 in which the name of petitioner did not figure. It is equally admitted case of the petitioner that he had not raised any protest or objection qua not inclusion his name either of the list as aforesaid till date.

12. Ld. counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union**, in which Hon'ble Apex Court has held that non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act. I have gone through this judgment which is not applicable to present case as respondent had displayed as well as prepared seniority list per evidence on record and it is not material to consider at this stage reasons for non inclusion of the name of claimant/petitioner.

13. Ld. counsel for the petitioner has further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 95** titled as **Sudarshan Rajpoot vs. U.P. State Road Transport Corporation** in which Hon'ble Apex Court has dealt with aspect of termination of contractual appointment. In this case, it was held that respondent had failed to prove that the appellant was appointed on contractual basis by producing any cogent evidence. It was further held that even otherwise the appellant has worked for more than three years and 240 days in a year and his removal from service amounted to unfair labour practice. The case in hand clearly distinguishable from the case of Hon'ble Apex Court having different facts altogether before this court as petitioner is established to have worked initially on work contract basis and thereafter on fixed monthly salary. Needless to mention here that after the year 2006, the petitioner had applied time and again for seeking job of supporting field staff on fixed monthly salary and therefore he continued to be contractual employee and thus the judgment of **Sudarshan Rajpoot (2015) supra** would not be attracted in this case.

14. The crux of the problem which has cropped up for adjudication before this court is to determine relationship between claimant/petitioner and the respondent. If petitioner is found to have worked on contractual basis as has been argued by ld. counsel for respondent, petitioner would not fall under the definition of the workman in view of specific provision envisaged under Section 2(oo) dealing with retrenchment as definition of workman is to be read with retrenchment of workman under Section 2(oo) of the Industrial Disputes Act. Section 2 (bb) provides the termination of services of workman with result of nonrenewal of contract of employment would not constitute retrenchment. In the case in hand, there is no reliable evidence on record establishing that the name of claimant/petitioner existed in muster roll and when he was engaged as field staff vide appointment offer vide Ex. RB dated 19.6.2006 subsequent offer of appointment as field staff dated 16.4.2010 Ex. RC and lastly vide Ex. RD it is established on record that petitioner had worked on contractual basis while accepting the offer of appointment by the respondent and in preceding 12 months he had not been engaged as daily wage basis. If petitioner had worked as supporting field staff and received fixed monthly salary from 2009 to 2012, then by no stretch of imagination, he would be falling in the definition of workman and at the same time, version of claimant/petitioner that he had worked regularly and completed 240 days cannot be relied. It would be also pertinent to mention here that the petitioner claimed to have worked on daily wage basis but vide Ex. P1 information furnished under RTI revealed that he had worked monthly on daily paid basis since year 2003. Thus, plea of petitioner to have been engaged by respondent as daily wage basis in 2000 gets falsified from document referred to above.

15. Ld. counsel for the respondent has taken through cross-examination of petitioner in which he has specifically admitted that while being employed as daily wage, he had not produced any record as he has claimed that the records was with the department. He has further admitted in cross-examination that his name was not sponsored by the employment exchange. He has shown ignorance if he had ever been engaged on muster roll but maintained that from very beginning he had been working with agro forestry and organic farming department. He has admitted in cross-examination that workmen whose name was entered in the muster roll invariably gets incorporated in the seniority list but no seniority list showing petitioner's name has been provided by his department. Significantly, he has admitted that correctness of seniority list prepared by the respondent/department as he has admitted in cross-examination that he did not raise any objection qua seniority list which had been circulated twice. Not only this, petitioner admitted that after 1998 university had not engaged any one as daily paid labourer, then how he was appointed or engaged in April, 2000 cannot be accepted as correct rather it falsified the claim of petitioner. It may pertinent to state here that petitioner had put his signature on Ex. RA bill voucher vide which he had received payment besides he has also admitted on oath that on 10th March, 2008 in pursuance to office order, he was appointed as supporting staff on monthly salary of Rs.3500/- on the basis of application submitted by him. Similarly, vide Ex. RB, Ex. RC petitioner was appointed on fixed monthly salary however vide Ex. RD his contract of employment was terminated consequent upon termination of project in which petitioner worked and other important aspect which goes to root of the case as admitted by the claimant/petitioner on oath is that all workmen similarly situated were being engaged through contractor which goes to show that respondent/employer had stopped direct recruitment and workmen were being supplied by the contractor.

16. Shri Manoj Kumar, registrar HPKV Palampur has shown his ignorance about the number of employees who have been regularized as he could speak so on being shown record. He has also shown his ignorance qua number of employees who were working contractual fixed monthly salary. He has further revealed in cross-examination that project ICAR was with the Central Government and he has admitted that no retrenchment compensation to the claimant/petitioner was paid but clarified that it was not required under the law. He has maintained that petitioner worked as seasonal worker in the project. On the point of regularization of Kulwant Singh and Kartar Singh this witness has clarified the same by stating that they had been engaged as daily waged workers and were regularized because they were working since 1994 and after 1998, no daily paid labourer were employed by the department. About Smt. Promila Devi RW1 has maintained that she was engaged as data entry operator on contractual basis on fixed amount as per Ex. P-2. RW1 in his cross-examination maintained that respondent had engaged Smt. Promila Devi was also casual worker and her regularization in pursuance to sanction from finance department.

17. In his affidavit RW2 Shri S.P. Sharma, Dean, CSK HPKV Palampur, District Kangra has stated that funding agencies was released budget under different heads such as salary head, non-recurring contingency and recurring contingency and labourers were engaged from time to time. Said Shri S.P. Sharma, RW2 also specifically stated that the appointment of claimant/petitioner was for a limited tenure. Even otherwise also, Ex. P4 statute of Choudhery Sarwan Kumar H.P. Krishi Vishvavidyalaya also defines '**employees**' under Rule 1.4 dealing with definition which reads as under:-

"Employees means whole time employees (including officers and teachers) other than part time employees, honorary employees or those paid from contingencies"

18. Ld. counsel for respondent has contended with vehemence that even definition of 'employees' is defined under Statutes of University excludes part time employees and those paid from contingencies. RW2 Shri S.P. Sharma has stated in his affidavit that research projects are sanctioned for specified period and funding agencies provide funds for existing those projects. He

has further stated that workmen/labourers are engaged in short term projects sanctioned by different funding agencies from time to time for scientific research and university has no control to extend the projects when its objectives are achieved or project is closed. Be it noticed that these facts on oath have remained un-repudiated. RW2 has also stated that project in which petitioner was appointed was closed on 31.3.2012.

19. In **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.**, the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. Thus, there could not be relationship of deharidar/workman of claimant/petitioner with respondent as salary and remuneration was paid and at the same time the name of claimant/petitioner did not appear in the muster roll as well as in the seniority list. As such, it could not be construed by any stretch of imagination that claimant/petitioner was beldar engaged on muster roll. Having not established to have worked as beldar on muster roll and respondent had succeeded in establishing that claimant/petitioner was appointed on fixed monthly salary, it would be unsafe to hold that respondent while terminating the services of petitioner had violated mandatory provisions of Section 25-F of the Industrial Disputes Act.

20. In so far as engagement of juniors to that of present claimant/petitioner is concerned, suffice would be state here that claimant/petitioner had not worked on muster roll basis and also not worked as beldar besides his name did not figure in the seniority list as observed forgoing paras. It cannot be stated that any person junior to petitioner had been retained in service and claimant/petitioner had been terminated. Thus, there is even no violation of the provisions of Section 25-G of the Industrial Disputes Act. At the same time, there can also be no violation of the provisions of Section 25-H of the Industrial Disputes Act as claimant/petitioner claimed that juniors have been engaged and he had not been offered for reemployment. At the cost of repetition, it may not be erroneous to state here that petitioner had not been appointed as beldar on muster roll whose name did not figure in the seniority list and therefore even if some new persons have been engaged, petitioner could not be stated to have been denied opportunity offer of employment within the meaning of Section 25-H of the Industrial Disputes Act.

21. Ld. Authorized Representative for the petitioner had relied upon the judgment of Hon'ble Apex Court reported in **2002 LLR 928** titled as **M/s. National Aluminum Co. Ltd. vs. Deepak Kumar Panda & Ors.** in which Hon'ble Apex Court observed that employee can legally enforce his right to continue in service particularly when junior to him were continuing to work. In the case in hand, it is not attracted as no juniors were proved to be working with the respondent. Authorized Representative for the claimant/petitioner further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** in which the Hon'ble Apex Court has held that non-preparation of seniority list or non-display of seniority list is breach of the provisions of Section 25-G of the Industrial Disputes Act. I have gone through the aforestated judgment which would not be attracted in the case as the non inclusion of the name of claimant/petitioner in the seniority list was due to he being on contractual appointment and was not required to be shown in the seniority list. Otherwise also, seniority list had been prepared twice by respondent which has been circulated from time to time but claimant/petitioner had never taken objection as he admitted in cross-examination and thus he is now estopped to challenge the correctness of seniority list.

22. Enough has emphasized by the ld. Authorized Representative of claimant/petitioner on judgment of Hon'ble Apex Court reported in **2003 LLR 817** titled as **M/s. Bharat Heavy Electrical Limited vs. State of Uttar Pradesh & Ors.** in which Hon'ble Apex Court has held that non production of records pertaining to payments made to the gardeners either by the company or

the contractor will lead to drawing of adverse inference in establishing direct relationship of employer and employees between the principal employer and the workers alleged to be engaged by the contractor more so when photocopies for attendance and payments made have been produced by the gardeners. I have gone through this judgment but the case in hand, no record has been produced except the one bill by the claimant/petitioner. Be it noticed that respondent has fairly produced all relevant records concerning claimant/petitioner moreso when there has been no objection from side of petitioner that documents sought be produced have not been produced or withheld and as such judgment 2003 (supra) does not come to the rescue of the claimant/petitioner. For similar reason, judgment of Hon'ble Apex Court reported in **2015 LLR 785** titled as **Gauri Shanker vs. State of Rajasthan** relied upon by Ld. Authorized Representative is also not attracted in the facts and circumstances of the case. In view of the foregoing discussions keeping in view of definition of workman as defined under Section 2(s) read with Section 2(oo) (bb) and other documentary evidence on record, claimant/petitioner has failed to prove that he was daily wage worker engaged by respondent as no muster roll was prepared qua his engagement and at the same time his name also did not figure in seniority list and as such it is held that respondent had not violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Accordingly, issue no.1 is answered in negative and for similar reason issue no. 2 also answered in negative against the petitioner and in favour of respondent. In view of my findings foregoing paras, issue no.3 is answered in favour of respondent as it is not established that petitioner was daily paid worker of the respondent. Accordingly, issues no. 1 to 3 are decided in negative against the petitioner and in favour of respondent.

ISSUE NO.4

23. Ld. counsel for the respondent has raised the objection on the locus standi of the petitioner to sue but as the petitioner was employee of respondent whose services had been terminated, he could legitimately challenge the action of the respondent management had he succeeded in establishing that the action of respondent was illegal and unjustified. Thus, from facts on record, it cannot be stated that petitioner has no locus standi to sue respondent. Issue in hand is answered in negative in favour of petitioner and against the respondent.

ISSUE NO.5

24. In view of what has been held under the foregoing issues, nothing has been brought of this court, as to how this Court has no jurisdiction to entertain the claim of the petitioner. Issue in hand is thus decided in negative and accordingly held in favour of the petitioner and against the respondent.

ISSUE NO.6

25. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. counsel representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.7

26. In view of the findings on the above issues petitioner has cause of action, moreso when he alleged termination of service by respondent illegally. Hence, this issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.8

27. It is not shown as to how the petitioner has not come to the Court with clean hands. No evidence has been led on this issue. Therefore, this issue is decided accordingly.

ISSUE NO.9

28. It is not shown by the respondent as to what facts have been withheld by the petitioner from the court. Neither any evidence has been led nor any submissions have been made in this behalf by the respondent. Hence, this issue is also decided against the respondent and in favour of the petitioner.

RELIEF

29. As a sequel to my findings on foregoing issues claim petition is dismissed, leaving the parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of November, 2015.

Sd/-
(K.K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 08/2014
Date of Institution : 04.01.2014
Date of Decision : 17.11.2015

Shri Rajesh Kumar s/o Shri Puran Chand, r/o Village and P.O. Saliana, Tehsil Palampur,
District Mandi, H.P. District Kangra, H.P.Petitioner.

Versus

The Director of Research, Choudhery Sarwan Kumar Himachal Pradesh Krishi
Vishvavidyalaya, Palampur, District Kangra, H.P.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Rajesh Kumar S/O Shri Puran Chand, R/O Village and P.O. Saliana, Tehsil Palampur, District Mandi, H.P. w.e.f. 31.03.2012 vide order No. QSD/OA/CSKHPKV/206-56/257-85 dated 27.02.2012 by the Director of Research, Choudhery Sarwan Kumar, Himachal Pradesh Krishi Vishvavidyalaya, Palampur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been appointed by the respondent on daily wage basis w.e.f. April, 2000 who had been paid the daily rate as fixed by the State Govt. from time to time. It is alleged that petitioner had continuously worked without breaks with the Agro Forestry and Organic Agriculture department upto March, 2010 but while appointing him no letter was issued and at the same time terms and conditions were not settled. Averments made in the claim petition further revealed that service condition of the petitioner had been changed by the respondent by engaging him as supporting staff in the same department on fixed salary w.e.f. 10th April, 2010 instead of daily rate which he was receiving earlier and thus the petitioner continued to work under the Incharge of Agro Forestry and Organic Agriculture department upto 31st March, 2012. It further remains the case of petitioner that petitioner had completed 240 days in each calendar year w.e.f. April, 2000 to 31.3.2012 working with the same employer and was in continuous services envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called ‘the Act’ for brevity). It also remains the case of petitioner that respondent had not issued any attendance card, casual card or wage slip during period aforesaid besides maintained that the work and conduct of petitioner was found satisfactory who had been not given any chance for complaint to the management of respondent as well as to the Incharge or say head of department. The grievances of petitioner remains that the respondent had terminated service of petitioner along-with other similarly situated employees w.e.f. 31.3.2012 to 27.2.2012 vide letter no.QSD-DR-/4-13 (Tech) 2012/1951-53, dated 22nd March, 2012. It is alleged that even at the time of termination of the services, no retrenchment compensation envisaged under Section 25-F (b) of the Act was paid and thus termination without compliance of the above stated provision is null, void ab-initio. It is alleged that despite availability of works and funds with the department, services of the petitioner had been deliberately terminated without any misconduct on his part and thus the same was in violation of principle of natural justice. Averments made in the claim petition also revealed that several persons junior to claimant/petitioner namely Vinod Kumar, Rajeev Kumar, Suresh Kumar, Krishan Kumar, Ashwani Kumar, Ashok Kumar, Om Prakash, Vipan Kumar and Ravinder Kumar had been retained in service and while doing the same, respondent had not followed the principle of ‘Last come First go’ envisaged under Section 25-G of the Act. It also remain the case of the petitioner that after his termination, respondent had appointed fresh hands in place of petitioner namely Anurag Parmar, Santosh Kumar, Bablu, Om Prakash, Rattan Chand, Vinod Kumar, Rajeev Kumar and in this manner, petitioner had not been given an opportunity for reemployment and thus respondent had violated the provisions of Section 25-H of the Act. It is also alleged that petitioner had joined union in the year 2009 and due to union activities, petitioner’s services had been unlawfully terminated by the respondent and thus act of respondent in

terminating of services of petitioner was unfair labour practice as stipulated in Schedule Vth Clause 4 (a) and (b) of the Act. Not only this, petitioner also alleges discrimination on the part of respondent as one Kulwant Singh s/o Shri Nek Ram, r/o VPO Jhareth, Tehsil Palampur, District Kangra and Kartar Chand s/o Shri Hari Singh r/o Village Oder, P.O. Sungal, Tehsil Palampur, District Kangra were working on the post of supporting staff vide letter no. AFE/CSKHPK/2003/KAR/206-21/1179-94 dated 19.6.2006 in the department of Agro Forestry and Environment and both these workmen have been regularized after completion of eight years of service. The grievances of petitioner also remains that one Kumari Promila Devi d/o Shali Ram who was appointed on contract basis on fixed salary too has been regularized as clerk in regular pay scale after completion of eight years of service of State Govt. vide letter no. 66984-97 dated 19.7.2010. Thus, claiming his termination, petitioner alleges arbitrariness and act of respondent as unconstitutional in violation of mandatory provisions of the Act which has been prayed to be set aside. Accordingly, petitioner claims that his termination vide order dated 27.2.2012 w.e.f. 31.3.2012 be set aside and quashed and respondent be directed to reinstate petitioner in service with seniority, continuity in service and full back wages alongwith consequential benefits including litigation costs quantified at Rs.10,000/- besides the petitioner has also prayed for regularization service after completion of eight years of service in the regular pay scale.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections qua maintainability, locus standi, cause of action, jurisdiction, petitioner not falling within the definition of workman (diharidar) as he had never been engaged on muster roll basis in the records of the respondent university. It is specifically stipulated that the duties performed by petitioner were on contract basis for which bill of the work was raised and the same was paid at the rate not below the govt. rate. The petitioner is alleged to have been engaged for a particular period and **his employment was co-terminus with the project** and that petitioner while filing the claim petition has not approached the court with clean hands. On merits, respondent has asserted that according to policy of government of H.P. notified by Department of Finance order no. FIN.1-C(14)-1/83 dated 8.7.1998 adopted by university vide notification no. 1-2002/HPKV/97-78833-946 dated 13.11.1998 the policy/system to engage DPL i.e. daily paid labourer was banned. Thus, petitioner had never been engaged on daily paid labourer on muster roll basis in the year 2000 as has been claimed by him. It is also alleged that petitioner was engaged on contract basis in the year 2003 who used to raise bill of work performed and his wages were paid from the funds of project funded by ICAR/GOI and that no payment were paid from the grant-in-aid of the respondent university. It is alleged that the petitioner had been engaged on daily paid labourer on muster roll basis his name would have figured in the seniority list of university circulated in 2006 and later in the year 2008. It is further alleged that an ad-hoc project on Organic Farming in hill agriculture under the plan scheme (strengthening and development of agriculture education) Niche Area of Excellence was sanctioned to the respondent university by the Government of India in which some position of supporting staff (field workers) were provided on fixed project fellowship of Rs.2,500/- per month and these position for which the petitioner had applied and was selected and offered post of supporting staff vide letter no. AFE/CSKHPKV/2006-21/480-503 dated 10.3.2008 on terms and conditions contained therein. Thereafter, again advertised the position of supporting staff/field helper on project fellowship of Rs.3500/- fixed per month for which petitioner had applied and selected and was offered post of field helper job. Thereafter, petitioner had applied offered appointment on monthly salary of Rs.2500/- in the same department and petitioner/claimant was notified termination of adhoc research project in which petitioner was last engaged the services of petitioner had been terminated on 31st March, 2012 afternoon after serving him notice dated 27.2.2012. It is alleged that petitioner served one month advance notice of termination of service before termination by the head of project in which he had been terminated. In so far as allegation of regularization of Kulwant Singh and Kartar Chand are concerned, respondent in his reply specifically alleged that their services had been regularized according to policy of State Govt. and both these official had worked since 1994. At the same time, Smt. Promila Devi d/o Sh. Shali Ram

had been stated to be appointed data entry operator on contractual basis and her services had been regularized on the basis of policy framed by the govt. of H.P. vide letter no. PER (AP)-C-F(1)-1/2010 dated 7.5.2010 and as such case of petitioner had no direct nexus with Smt. Promila Devi. Thus, while denying cause of action as stated respondent has maintained that engagement of petitioner was co-terminus with the specific project in which he was appointed as supporting field staff on fixed monthly salary till completion of project and thus no provisions of the Industrial Disputes Act was stated to have been infringed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Manoj Kumar, the then Registrar, CSKHPKV, Palampur as RW1, RW2 Shri S.P. Sharma the Dean CSK HPKV Palampur tendered/proved his affidavit Ex. RW1/A and another affidavit Ex. RW2/A, letter dated 4.10.2007 Ex. RW1/B, Ex. RW1/C copy of letter dated 25.5.2009, Ex. RW1/D notification dated 13.11.1998, Ex. RW1/E copy of letter dated 8.7.1998, office order dated 17.2.1999 Ex. RW1/F, Ex. RW1/G copy of office order dated 19.7.2010, Ex. RW2/B copy of Award dated 30.6.2014 and closed the evidence.

7. I have heard the ld. counsel representing for the parties, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed by my ld. Predecessor on 27.02.2015 for determination:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 31.03.2012 is/was improper and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ...OPR.
4. Whether the petitioner has no locus standi to file the case as alleged? ...OPR.
5. Whether this court has no jurisdiction to file the present case as alleged? ...OPR.
6. Whether the claim petition is not maintainable in the present form? ...OPR.
7. Whether the petitioner has no cause of action to file the present case as alleged? ...OPR.
8. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? ...OPR.
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? ...OPR.
10. Relief.
9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : Yes

Issue No.5 : No

Issue No.6 : No

Issue No.7 : No

Issue No.8 : No

Issue No.9 : No

Relief. : Claim petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that claimant/petitioner claims to have worked from year 2000 to March, 2008 as beldar (deharidar) on daily wage and thereafter from April, 2010 to 31.3.2012 in various projects of the respondent. Thus, claiming to have rendered more than 6 years of continuous service completing 240 days in each calendar year, the petitioner has alleged that he was illegally and unlawfully retrenched by the respondent. Before proceeding further, it would be apt to mention here that information under RTI Act Ex. P1 was supplied which showed that petitioner had worked from 2003 to 2008 **on work contract basis** and later he worked for 170 days, 348 days, 320 days, 235 days, 215 days and 55 days on **fixed monthly salary basis co-terminus with the project**. It is admitted case of the parties that daily paid labourer had not been engaged by the respondent department after notification dated 21.4.1999 issued by Controller of HPKV Palampur. It is equally admitted case of the parties that name of the claimant/petitioner did not figure in the seniority list of daily wage workers although respondent had circulated tentative seniority list in the year 2006 which is Ex. RW1/B and thereafter final seniority list of daily wager worker/helpers as on 31.3.2008 Ex. RW1/C is final seniority list as on 31.3.2008 in which the name of petitioner did not figure. It is equally admitted case of the petitioner that he had not raised any protest or objection qua not inclusion his name either of the list as aforestated till date.

12. Ld. counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union**, in which Hon'ble Apex Court has held that non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act. I have gone through this judgment which is not applicable to present case as respondent had displayed as well as prepared seniority list per evidence on record and it is not material to consider at this stage reasons for non inclusion of the name of claimant/petitioner.

13. Ld. counsel for the petitioner has further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 95** titled as **Sudarshan Rajpoot vs. U.P. State Road Transport Corporation** in which Hon'ble Apex Court has dealt with aspect of termination of contractual appointment. In this case, it was held that respondent had failed to prove that the appellant was

appointed on contractual basis by producing any cogent evidence. It was further held that even otherwise the appellant had worked for more than three years and 240 days in a year and his removal from service amounted to unfair labour practice. The case in hand clearly distinguishable from the case of Hon'ble Apex Court having different facts altogether before this court as petitioner is established to have worked initially on work contract basis and thereafter on fixed monthly salary. Needless to mention here that after the year 2006, the petitioner had applied time and again for seeking job of supporting field staff on fixed monthly salary and therefore he continued to be contractual employee and thus the judgment of **Sudarshan Rajpoot (2015) supra** would not be attracted in this case.

14. The crux of the problem which has cropped up for adjudication before by this court is to determine relationship between claimant/petitioner and the respondent. If petitioner is found to have worked on contractual basis as has been argued by ld. counsel for respondent, petitioner would not fall under the definition of the workman in view of specific provision envisaged under Section 2(oo) dealing with retrenchment as definition of workman is to be read with retrenchment of workman under Section 2(oo) of the Industrial Disputes Act. Section 2 (bb) provides the termination of services of workman with result of nonrenewal of contract of employment would not constitute retrenchment. In the case in hand, there is no reliable evidence on record establishing that the name of claimant/petitioner existed in muster roll and when he was engaged as field staff vide appointment offer vide Ex. RB dated 10.3.2008 subsequent offer of appointment as field staff dated 16.4.2010 Ex. RC and lastly vide Ex. RD it is established on record that petitioner had worked on contractual basis while accepting the offer of appointment by the respondent and in preceding 12 months he had not been engaged as daily wage basis. If petitioner had worked as supporting field staff and received fixed monthly salary from 2010 to 2012, then by no stretch of imagination, he would be falling in the definition of workman and at the same time, version of claimant/petitioner that he had worked regularly and completed 240 days cannot be relied. It would be also pertinent to mention here that the petitioner claimed to have worked on daily wage basis but vide Ex. P1 information furnished under RTI revealed that he had worked monthly on daily paid basis since year 2003. Thus, plea of petitioner to have been engaged by respondent as daily wage basis in 2000 gets falsified from document referred to above.

15. Ld. counsel for the respondent has taken through cross-examination of petitioner in which he has specifically admitted that while being employed as daily wage, he had not produced any record as he has claimed that the records was with the department. He has further admitted in cross-examination that his name was not sponsored by the employment exchange. He has shown ignorance if he had ever been engaged on muster roll but maintained that from very beginning he had been working with agro forestry and organic farming department. He has admitted in cross-examination that workmen whose name was entered in the muster roll invariably gets incorporated in the seniority list but no seniority list showing petitioner's name has been provided by his department. Significantly, he has admitted that correctness of seniority list prepared by the respondent/department as he has admitted in cross-examination that he did not raise any objection qua seniority list which had been circulated twice. Not only this, petitioner admitted that after 1998 university had not engaged any one as daily paid labourer, then how he was appointed or engaged in April, 2000 cannot be accepted as correct rather it falsified the claim of petitioner. It may pertinent to state here that petitioner had put his signature on Ex. RA bill voucher vide which he had received payment besides he has also admitted on oath that on 10th March, 2008 in pursuance to office order, he was appointed as supporting staff on monthly salary of Rs.3500/- on the basis of application submitted by him. Similarly, vide Ex. RB, Ex. RC petitioner was appointed on fixed monthly salary however vide Ex. RD his contract of employment was terminated consequent upon termination of project in which petitioner worked and other important aspect which goes to root of the case as admitted by the claimant/petitioner on oath is that all workmen similarly situated were being engaged through contractor which goes to show that respondent/employer had stopped direct recruitment and workmen were being supplied by the contractor.

16. Shri Manoj Kumar, registrar HPKV Palampur has shown his ignorance about the number of employees who have been regularized as he could speak so on being shown record. He has also shown his ignorance qua number of employees who were working contractual fixed monthly salary. He has further revealed in cross-examination that project ICAR was with the Central Government and he has admitted that no retrenchment compensation to the claimant/petitioner was paid but clarified that it was not required under the law. He has maintained that petitioner worked as seasonal worker in the project. On the point of regularization of Kulwant Singh and Kartar Singh this witness has clarified the same by stating that they had been engaged as daily waged workers and were regularized because they were working since 1994 and after 1998, no daily paid labourer were employed by the department. About Smt. Promila Devi RW1 has maintained that she was engaged as data entry operator on contractual basis on fixed amount as per Ex. P-2. RW1 in his cross-examination maintained that respondent had engaged Smt. Promila Devi was also casual worker and her regularization in pursuance to sanction from finance department.

17. In his affidavit RW2 Shri S.P. Sharma, Dean, CSK HPKV Palampur, District Kangra has stated that funding agencies was released budget under different heads such as salary head, non-recurring contingency and recurring contingency and labourers were engaged from time to time. Said Shri S.P. Sharma, RW2 also specifically stated that the appointment of claimant/petitioner was for a limited tenure. Even otherwise also, Ex. P4 statute of Choudhery Sarwan Kumar H.P. Krishi Vishvavidyalaya also defines ‘employees’ under Rule 1.4 dealing with definition which reads as under:—

“Employees means whole time employees (including officers and teachers) **other than part time employees, honorary employees or those paid from contingencies**”

18. Ld. counsel for respondent has contended with vehemence that even definition of ‘employees’ is defined under Statutes of University excludes part time employees and those paid from contingencies. RW2 Shri S.P. Sharma has stated in his affidavit that research projects are sanctioned for specified period and funding agencies provide funds for existing those projects. He has further stated that workmen/labourers are engaged in short term projects sanctioned by different funding agencies from time to time for scientific research and university has no control to extend the projects when its objectives are achieved or project is closed. Be it noticed that these facts on oath have remained un-repudiated. RW2 has also stated that project in which petitioner was appointed was closed on 31.3.2012.

19. In **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.**, the Hon’ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. Thus, there could not be relationship of deharidars/workman of claimant/petitioner with respondent as salary and remuneration was paid and at the same time the name of claimant/petitioner did not appear in the muster roll as well as in the seniority list. As such, it could not be construed by any stretch of imagination that claimant/petitioner was beldar engaged on muster roll. Having not established to have worked as beldar on muster roll and respondent had succeeded in establishing that claimant/petitioner was appointed on fixed monthly salary, it would be unsafe to hold that respondent while terminating the services of petitioner had violated mandatory provisions of Section 25-F of the Industrial Disputes Act.

20. In so far as engagement of juniors to that of present claimant/petitioner is concerned, suffice would be state here that claimant/petitioner had not worked on muster roll basis and also not worked as beldar besides his name did not figure in the seniority list as observed forgoing paras. It cannot be stated that any person junior to petitioner had been retained in service and

claimant/petitioner had been terminated. Thus, there is even no violation of the provisions of Section 25-G of the Industrial Disputes Act. At the same time, there can also be no violation of the provisions of Section 25-H of the Industrial Disputes Act as claimant/petitioner claimed that juniors have been engaged and he had not been offered for reemployment. At the cost of repetition, it may not be erroneous to state here that petitioner had not been appointed as beldar on muster roll whose name did not figure in the seniority list and therefore even if some new persons have been engaged, petitioner could not be stated to have been denied opportunity offer of employment within the meaning of Section 25-H of the Industrial Disputes Act.

21. Ld. Authorized Representative for the petitioner had relied upon the judgment of Hon'ble Apex Court reported in **2002 LLR 928** titled as **M/s. National Aluminum Co. Ltd. vs. Deepak Kumar Panda & Ors.** in which Hon'ble Apex Court observed that employee can legally enforce his right to continue in service particularly when junior to him were continuing to work. In the case in hand, it is not attracted as no juniors were proved to be working with the respondent. Authorized Representative for the claimant/petitioner further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** in which the Hon'ble Apex Court has held that non-preparation of seniority list or non-display of seniority list is breach of the provisions of Section 25-G of the Industrial Disputes Act. I have gone through the aforestated judgment which would not be attracted in the case as the non inclusion of the name of claimant/petitioner in the seniority list was due to he being on contractual appointment and was not required to be shown in the seniority list. Otherwise also, seniority list had been prepared twice by respondent which has been circulated from time to time but claimant/petitioner had never taken objection as he admitted in cross-examination and thus he is now estopped to challenge the correctness of seniority list.

22. Enough has emphasized by the ld. Authorized Representative of claimant/petitioner on judgment of Hon'ble Apex Court reported in **2003 LLR 817** titled as **M/s. Bharat Heavy Electrical Limited vs. State of Uttar Pradesh & Ors.** in which Hon'ble Apex Court has held that non production of records pertaining to payments made to the gardeners either by the company or the contractor will lead to drawing of adverse inference in establishing direct relationship of employer and employees between the principal employer and the workers alleged to be engaged by the contractor more so when photocopies for attendance and payments made have been produced by the gardeners. I have gone through this judgment but the case in hand, no record has been **produced except the one bill by the claimant/petitioner**. Be it noticed that respondent has fairly produced all relevant records concerning claimant/petitioner moreso when there has been no objection from side of petitioner that documents sought be produced have not been produced or withheld and as such judgment 2003 (supra) does not come to the rescue of the claimant/petitioner. For similar reason, judgment of Hon'ble Apex Court reported in **2015 LLR 785** titled as **Gauri Shanker vs. State of Rajasthan** relied upon by Ld. Authorized Representative is also not attracted in the facts and circumstances of the case. In view of the foregoing discussions keeping in view of definition of workman as defined under Section 2(s) read with Section 2(oo) (bb) and other documentary evidence on record, claimant/petitioner has failed to prove that he was daily wage worker engaged by respondent as no muster roll was prepared qua his engagement and at the same time his name also did not figure in seniority list and as such it is held that respondent had not violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Accordingly, issue no.1 is answered in negative and for similar reason issue no. 2 also answered in negative against the petitioner and in favour of respondent. In view of my findings foregoing paras, issue no.3 is answered in favour of respondent as it is not established that petitioner was daily paid worker of the respondent. Accordingly, issues no. 1 to 3 are decided in negative against the petitioner and in favour of respondent.

ISSUE NO.4

23. Ld. counsel for the respondent has raised the objection on the locus standi of the petitioner to sue but as the petitioner was employee of respondent whose services had been terminated, he could legitimately challenge the action of the respondent management had he succeeded in establishing that the action of respondent was illegal and unjustified. Thus, from facts on record, it cannot be stated that petitioner has no locus standi to sue respondent. Issue in hand is answered in negative in favour of petitioner and against the respondent.

ISSUE NO.5

24. In view of what has been held under the foregoing issues, nothing has been brought of this court, as to how this Court has no jurisdiction to entertain the claim of the petitioner. Issue in hand is thus decided in negative and accordingly held in favour of the petitioner and against the respondent.

ISSUE NO.6

25. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. counsel representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.7

26. In view of the findings on the above issues petitioner has cause of action, moreso when he alleged termination of service by respondent illegally. Hence, this issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.8

27. It is not shown as to how the petitioner has not come to the Court with clean hands. No evidence has been led on this issue. Therefore, this issue is decided accordingly.

ISSUE NO.9

28. It is not shown by the respondent as to what facts have been withheld by the petitioner from the court. Neither any evidence has been led nor any submissions have been made in this behalf by the respondent. Hence, this issue is also decided against the respondent and in favour of the petitioner.

RELIEF

29. As a sequel to my findings on foregoing issues claim petition is dismissed, leaving the parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of November, 2015.

Sd/-
(K. K. SHARMA)
*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 09/2014
Date of Institution : 04.01.2014
Date of Decision : 17.11.2015

Shri Kamaljeet Chauhan s/o late Shri Rajinder Singh, r/o Village & P.O. Saliana, Tehsil Palampur, District Mandi, H.P.*Petitioner.*

Versus

The Director of Research, Choudhery Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur, District Kangra, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Kamaljeet Chauhan S/o Late Shri Rajinder Singh, R/O Village and P.O. Saliana, Tehsil Palampur, District Mandi, H.P., w.e.f. 31.03.2012 vide order No.QSD/OA/CSKHPKV/206-56/257-85 dated 27.2.2012 by the Director of Research, Choudhery Sarwan Kumar, Himachal Pradesh Krishi Vishvavidyalaya, Palampur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been appointed by the respondent on daily wage basis w.e.f. 01.6.2006 who had been paid the daily rate as fixed by the State Govt. from time to time. It is alleged that petitioner had continuously worked without

breaks with the Agro Forestry and Organic Agriculture department upto 19.6.2006 but while appointing him no letter was issued and at the same time terms and conditions were not settled. Averments made in the claim petition further revealed that service condition of the petitioner had been changed by the respondent by engaging him as supporting staff in the same department on fixed salary w.e.f. 20.6.2006 instead of daily rate which he was receiving earlier and thus the petitioner continued to work under the Incharge of Agro Forestry and Organic Agriculture department upto 31st March, 2012. It further remains the case of petitioner that petitioner had completed 240 days in each calendar year w.e.f. 01.6.2006 to 31.3.2012 working with the same employer and was in continuous services envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). It also remains the case of petitioner that respondent had not issued any attendance card, casual card or wage slip during period aforesaid besides maintained that the work and conduct of petitioner was found satisfactory who had been not given any chance for complaint to the management of respondent as well as to the Incharge or say head of department. The grievances of petitioner remains that the respondent had terminated service of petitioner along-with other similarly situated employees w.e.f. 31.3.2012 to 27.2.2012 vide letter no.QSD-DR-/4-13 (Tech) 2012/1951-53, dated 22nd March, 2012. It is alleged that even at the time of termination of the services, no retrenchment compensation envisaged under Section 25-F (b) of the Act was paid and thus termination without compliance of the above stated provision is null, void ab-initio. It is alleged that despite availability of works and funds with the department, services of the petitioner had been deliberately terminated without any misconduct on his part and thus the same was in violation of principle of natural justice. Averments made in the claim petition also revealed that several persons junior to claimant/petitioner namely Vinod Kumar, Rajeev Kumar, Suresh Kumar, Krishan Kumar, Ashwani Kumar, Ashok Kumar, Om Prakash, Vipan Kumar and Ravinder Kumar had been retained in service and while doing the same, respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It also remain the case of the petitioner that after his termination, respondent had appointed fresh hands in place of petitioner namely Anurag Parmar, Santosh Kumar, Bablu, Om Prakash, Rattan Chand, Vinod Kumar, Rajeev Kumar and in this manner, petitioner had not been given an opportunity for reemployment and thus respondent had violated the provisions of Section 25-H of the Act. It is also alleged that petitioner had joined union in the year 2009 and due to union activities, petitioner's services had been unlawfully terminated by the respondent and thus act of respondent in terminating of services of petitioner was unfair labour practice as stipulated in Schedule Vth Clause 4 (a) and (b) of the Act. Not only this, petitioner also alleges discrimination on the part of respondent as one Kulwant Singh s/o Shri Nek Ram, r/o VPO Jhareth, Tehsil Palampur, District Kangra and Kartar Chand s/o Shri Hari Singh r/o Village Oder, P.O. Sungal, Tehsil Palampur, District Kangra were working on the post of supporting staff vide letter no. AFE/CSKHPK/2003/KAR/206-21/1179-94 dated 19.6.2006 in the department of Agro Forestry and Environment and both these workmen have been regularized after completion of eight years of service. The grievances of petitioner also remains that one Kumari Promila Devi d/o Shali Ram who was appointed on contract basis on fixed salary too has been regularized as clerk in regular pay scale after completion of eight years of service of State Govt. vide letter no. 66984-97 dated 19.7.2010. Thus, claiming his termination, petitioner alleges arbitrariness and act of respondent as unconstitutional in violation of mandatory provisions of the Act which has been prayed to be set aside Accordingly, petitioner claims that his termination vide order dated 27.2.2012 w.e.f. 31.3.2012 be set aside and quashed and respondent be directed to reinstate petitioner in service with seniority, continuity in service and full back wages alongwith consequential benefits including litigation costs quantified at Rs.10,000/- besides the petitioner has also prayed for regularization service after completion of eight years of service in the regular pay scale.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections qua maintainability, locus standi, cause of action, jurisdiction, petitioner not falling within the definition of workman (diharidar) as he had never been engaged on muster roll basis in

the records of the respondent university. It is specifically stipulated that the duties performed by petitioner were on contract basis for which bill of the work was raised and the same was paid at the rate not below the govt. rate. The petitioner is alleged to have been engaged for a particular period and **his employment was co-terminus with the project** and that petitioner while filing the claim petition has not approached the court with clean hands. On merits, respondent has asserted that according to policy of government of H.P. notified by Department of Finance order no. FIN.1-C(14)-1/83 dated 8.7.1998 adopted by university vide notification no. 1-2002/HPKV/97-78833-946 dated 13.11.1998 the policy/system to engage DPL i.e. daily paid labourer was banned. Thus, petitioner had never been engaged on daily paid labourer on muster roll basis in the year 2006 as has been claimed by him. It is also alleged that petitioner was engaged on contract basis in the year 2006 who used to raise bill of work performed and his wages were paid from the funds of project funded by ICAR/GOI and that no payment were paid from the grant-in-aid of the respondent university. It is alleged that the petitioner had been engaged on daily paid labourer on muster roll basis his name would have figured in the seniority list of university circulated in 2006 and later in the year 2008. It is further alleged that an ad-hoc project on Organic Farming in hill agriculture under the plan scheme (strengthening and development of agriculture education) Niche Area of Excellence was sanctioned to the respondent university by the Government of India in which some position of supporting staff (field workers) were provided on fixed project fellowship of Rs.2,500/- per month and these position for which the petitioner had applied and was selected and offered post of supporting staff vide letter no. AFE/CSKHPKV/2006-21/480-503 dated 10.3.2008 on terms and conditions contained therein. Thereafter, again advertised the position of supporting staff/field helper on project fellowship of Rs.3500/- fixed per month for which petitioner had applied and selected and was offered post of field helper job. Thereafter, petitioner had applied offered appointment on monthly salary of Rs.2500/- in the same department and petitioner/claimant was notified termination of adhoc research project in which petitioner was last engaged the services of petitioner had been terminated on 31st March, 2012 afternoon after serving him notice dated 27.2.2012. It is alleged that petitioner served one month advance notice of termination of service before termination by the head of project in which he had been terminated. In so far as allegation of regularization of Kulwant Singh and Kartar Chand are concerneds, respondent in his reply specifically alleged that their services had been regularized according to policy of State Govt. and both these official had worked since 1994. At the same time, Smt. Promila Devi d/o Sh. Shali Ram had been stated to be appointed data entry operator on contractual basis and her services had been regularized on the basis of policy framed by the govt. of H.P. vide letter no. PER (AP)-C-F(1)-1/2010 dated 7.5.2010 and as such case of petitioner had no direct nexus with Smt. Promila Devi. Thus, while denying cause of action as stated respondent has maintained that engagement of petitioner was co-terminus with the specific project in which he was appointed as supporting field staff on fixed monthly salary till completion of project and thus no provisions of the Industrial Disputes Act was stated to have been infringed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Manoj Kumar, the then Registrar, CSKHPKV, Palampur as RW1, RW2 Shri S.P. Sharma the Dean CSK HPKV Palampur tendered/proved his affidavit Ex. RW1/A and another affidavit Ex. RW2/A, letter dated 4.10.2007 Ex. RW1/B, Ex. RW1/C copy of letter dated 25.5.2009, Ex. RW1/D notification dated 13.11.1998, Ex. RW1/E copy of letter dated 8.7.1998, office order dated 17.2.1999 Ex. RW1/F, Ex. RW1/G copy of notification dated 26.4.1999, Ex. RW1/H letter dated 19.6.2006, Ex. RW2/B copy of Award dated 30.6.2014 and closed the evidence. Be it noticed that respondent through counsel vide separate statement dated 17.11.2015 has stated question concerning Ex. RA be not read in evidence as no such document relate to the present case. Ld. Authorized Representative too vide

separate statement has admitted the correctness of statement so made by ld. counsel for the respondent. In view of statements made by the parties through counsel/AR, since Ex. RA did not relate to present case which has been exhibited inadvertently be now not read in evidence in favour of either parties.

7. I have heard the ld. counsel representing for the parties, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed by my ld. Predecessor on 27.02.2015 for determination:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 31.03.2012 is/was improper and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect?
4. Whether the petitioner has no locus standi to file the case as alleged? ...OPR.
5. Whether this court has no jurisdiction to file the present case as alleged? ...OPR.
6. Whether the claim petition is not maintainable in the present form? ...OPR.
7. Whether the petitioner has no cause of action to file the present case as alleged? ...OPR.
8. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? ...OPR.
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? ...OPR.
10. Relief.
9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : Yes

Issue No.5 : No

Issue No.6 : No

Issue No.7 : No

Issue No.8 : No

Issue No.9 : No

Relief. : Claim petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that claimant/petitioner claims to have worked from year 1st June, 2006 to 19th June, 2006 as beldar (deharidar) as daily wage and thereafter from 20.6.2006 to 31.3.2012 in various projects of the respondent. Thus, claiming to have rendered more than 6 years of continuous service completing 240 days in each calendar year, the petitioner has alleged that he was illegally and unlawfully retrenched by the respondent. Before proceeding further, it would be apt to mention here that information under RTI Act Ex. P1 was supplied which showed that petitioner had worked from July, 2006 to March, 2012 **on work contract basis** and later he worked on **fixed monthly salary basis coterminous with the project**. It is admitted case of the parties that daily paid labourer had not been engaged by the respondent department after notification dated 21.4.1999 issued by Controller of HPKV Palampur. It is equally admitted case of the parties that name of the claimant/petitioner did not figure in the seniority list of daily wage workers although respondent had circulated tentative seniority list in the year 2006 which is Ex. RW1/B and thereafter final seniority list of daily wager worker/helpers as on 31.3.2008 Ex. RW1/C is final seniority list as on 31.3.2012 in which the name of petitioner did not figure. It is equally admitted case of the petitioner that he had not raised any protest or objection qua not inclusion his name either of the list as aforestated till date.

12. Ld. counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union**, in which Hon'ble Apex Court has held that non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act. I have gone through this judgment which is not applicable to present case as respondent had displayed as well as prepared seniority list per evidence on record and it is not material to consider at this stage reasons for non inclusion of the name of claimant/petitioner. 13. Ld. counsel for the petitioner has further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 95** titled as **Sudarshan Rajpoot vs. U.P. State Road Transport Corporation** in which Hon'ble Apex Court has dealt with aspect of termination of contractual appointment. In this case, it was held that respondent had failed to prove that the appellant was appointed on contractual basis by producing any cogent evidence. It was further held that even otherwise the appellant had worked for more than three years and 240 days in a year and his removal from service amounted to unfair labour practice. The case in hand clearly distinguishable from the case of Hon'ble Apex Court having different facts altogether before this court as petitioner is established to have worked initially on work contract basis and thereafter on fixed monthly salary. Needless to mention here that after the year 2006, the petitioner had applied time and again for seeking job of supporting field staff on fixed monthly salary and therefore he continued to be contractual employee and thus the judgment of **Sudarshan Rajpoot (2015) supra** would not be attracted in this case.

14. The crux of the problem which has cropped up for adjudication before by this court is to determine relationship between claimant/petitioner and the respondent. If petitioner is found to

have worked on contractual basis as has been argued by ld. counsel for respondent, petitioner would not fall under the definition of the workman in view of specific provision envisaged under Section 2(oo) dealing with retrenchment as definition of workman is to be read with retrenchment of workman under Section 2(oo) of the Industrial Disputes Act. Section 2 (bb) provides the termination of services of workman with result of nonrenewal of contract of employment would not constitute retrenchment. In the case in hand, there is no reliable evidence on record establishing that the name of claimant/petitioner existed in muster roll and when he was engaged as field staff vide appointment offer vide Ex. RB dated 10.3.2008 subsequent offer of appointment as field staff dated 16.4.2010 Ex. RC and lastly vide Ex. RD it is established on record that petitioner had worked on contractual basis while accepting the offer of appointment by the respondent and in preceding 112 months he had not been engaged on daily wage basis. If petitioner had worked as supporting field staff and received fixed monthly salary from 2006 to 2012, then by no stretch of imagination, he would be falling in the definition of workman and at the same time, version of claimant/petitioner that he had worked regularly and competed 240 days cannot be relied. It would be also pertinent to mention here that the petitioner claimed to have worked on daily wage basis but vide Ex. P1 information furnished under RTI revealed that he had worked monthly on daily paid basis since year July, 2006. Thus, plea of petitioner to have been engaged by respondent as daily wage basis in June, 2006 gets falsified from document referred to above.

15. Ld. counsel for the respondent has taken through cross-examination of petitioner in which he has specifically admitted that while being employed as daily wage, he had not produced any record as he has claimed that the records was with the department. He has further admitted in cross-examination that his name was not sponsored by the employment exchange. He has shown ignorance if he had ever been engaged on muster roll but maintained that from very beginning he had been working with agro forestry and organic farming department. He has admitted in cross-examination that workmen whose name was entered in the muster roll invariably gets incorporated in the seniority list but no seniority list showing petitioner's name has been provided by his department. Significantly, he has admitted that correctness of seniority list prepared by the respondent/department as he has admitted in cross-examination that he did not raise any objection qua seniority list which had been circulated twice. Not only this, petitioner admitted that after 1998 university had not engaged any one as daily paid labourer, then how he was appointed or engaged in April, 2000 cannot be accepted as correct rather it falsified the claim of petitioner. It may pertinent to state here that petitioner had put his signature on Ex. RA bill voucher vide which he had received payment besides he has also admitted on oath that on 10th March, 2008 in pursuance to office order, he was appointed as supporting staff on monthly salary of Rs.3500/- on the basis of application submitted by him. It is pertinent to state here that petitioner has admitted that he has been appointed/engaged as supporting field staff on fixed monthly salary vide Ex. RB, Ex. RC on record. He has also admitted that he had applied afresh to the respondent for engagement as supporting staff in pursuance to their circular for engagement of supporting staff. Significantly, petitioner has also admitted that his contract of employment was terminated vide Ex. RD and that all the workmen similarly situated were being engaged through contractor which goes to show that respondent had stopped direct recruitment per policy of the university.

16. Shri Manoj Kumar, registrar HPKV Palampur has shown his ignorance about the number of employees who have been regularized as he could speak so on being shown record. He has also shown his ignorance qua number of employees who were working contractual fixed monthly salary. He has further revealed in cross-examination that project ICAR was with the Central Government and he has admitted that no retrenchment compensation to the claimant/petitioner was paid but clarified that it was not required under the law. He has maintained that petitioner worked as seasonal worker in the project. On the point of regularization of Kulwant Singh and Kartar Singh this witness has clarified the same by stating that they had been engaged as daily waged workers and were regularized because they were working since 1994 and after 1998,

no daily paid labourer were employed by the department. About Smt. Promila Devi RW1 has maintained that she was engaged as data entry operator on contractual basis on fixed amount as per Ex. P-2. RW1 in his cross-examination maintained that respondent had engaged Smt. Promila Devi was also casual worker and her regularization in pursuance to sanction from finance department.

17. In his affidavit RW2 Shri S.P. Sharma, Dean, CSK HPKV Palampur, District Kangra has stated that funding agencies was released budget under different heads such as salary head, non-recurring contingency and recurring contingency when labourers were engaged from time to time. Said Shri S.P. Sharma, RW2 also specifically stated that the appointment of claimant/petitioner was for a limited tenure. Even otherwise also, Ex. P4 statute of Choudhery Sarwan Kumar H.P. Krishi Vishvavidyalaya also defines '**employees**' under Rule 1.4 dealing with definition which reads as under:-

"Employees means whole time employees (including officers and teachers) other than part time employees, honorary employees or those paid from contingencies"

18. Ld. counsel for respondent has contended with vehemence that even definition of 'employees' is defined under Statutes of University excludes part time employees and those paid from contingencies. RW2 Shri S.P. Sharma has stated in his affidavit that research projects are sanctioned for specified period and funding agencies provide funds for existing those projects. He has further stated that workmen/labourers are engaged in short term projects sanctioned by different funding agencies from time to time for scientific research and university has no control to extend the projects when its objectives are achieved or project is closed. Be it noticed that these facts on oath have remained un-repudiated. RW2 has also stated that project in which petitioner was appointed was closed on 31.3.2012.

19. In **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.**, the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. Thus, there could not be relationship of deharidar/workman of claimant/petitioner with respondent as salary and remuneration was paid and at the same time the name of claimant/petitioner did not appear in the muster roll as well as in the seniority list. As such, it could not be construed by any stretch of imagination that claimant/petitioner was beldar engaged on muster roll. Having not established to have worked as beldar on muster roll and respondent had succeeded in establishing that claimant/petitioner was appointed on fixed monthly salary, it would be unsafe to hold that respondent while terminating the services of petitioner had violated mandatory provisions of Section 25-F of the Industrial Disputes Act.

20. In so far as engagement of juniors to that of present claimant/petitioner is concerned, suffice would be state here that claimant/petitioner had not worked on muster roll basis and also not worked as beldar besides his name did not figure in the seniority list as observed forgoing paras. It cannot be stated that any person junior to petitioner had been retained in service and claimant/petitioner had been terminated. Thus, there is even no violation of the provisions of Section 25-G of the Industrial Disputes Act. At the same time, there can also be no violation of the provisions of Section 25-H of the Industrial Disputes Act as claimant/petitioner claimed that juniors have been engaged and he had not been offered for reemployment. At the cost of repetition, it may not be erroneous to state here that petitioner had not been appointed as beldar on muster roll whose name did not figure in the seniority list and therefore even if some new persons have been engaged, petitioner could not be stated to have been denied opportunity offer of employment within the meaning of Section 25-H of the Industrial Disputes Act.

21. Ld. Authorized Representative for the petitioner had relied upon the judgment of Hon'ble Apex Court reported in **2002 LLR 928** titled as **M/s. National Aluminum Co. Ltd. vs. Deepak Kumar Panda & Ors.** in which Hon'ble Apex Court observed that employee can legally enforce his right to continue in service particularly when junior to him were continuing to work. In the case in hand, it is not attracted as no juniors were proved to be working with the respondent. Authorized Representative for the claimant/petitioner further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** in which the Hon'ble Apex Court has held that non-preparation of seniority list or non-display of seniority list is breach of the provisions of Section 25-G of the Industrial Disputes Act. I have gone through the aforestated judgment which would not be attracted in the case as the non inclusion of the name of claimant/petitioner in the seniority list was due to he being on contractual appointment and was not required to be shown in the seniority list. Otherwise also, seniority list had been prepared twice by respondent which has been circulated from time to time but claimant/petitioner had never taken objection as he admitted in cross-examination and thus he is now estopped to challenge the correctness of seniority list.

22. Enough has emphasized by the Ld. Authorized Representative of claimant/petitioner on judgment of Hon'ble Apex Court reported in **2003 LLR 817** titled as **M/s. Bharat Heavy Electrical Limited vs. State of Uttar Pradesh & Ors.** in which Hon'ble Apex Court has held that non production of records pertaining to payments made to the gardeners either by the company or the contractor will lead to drawing of adverse inference in establishing direct relationship of employer and employees between the principal employer and the workers alleged to be engaged by the contractor more so when photocopies for attendance and payments made have been produced by the gardeners. I have gone through this judgment but the case in hand, no record has been produced. Be it noticed that respondent has fairly produced all relevant records concerning claimant/petitioner moreso when there has been no objection from side of petitioner that documents sought be produced have not been produced or withheld and as such judgment 2003 (supra) does not come to the rescue of the claimant/petitioner. For similar reason, judgment of Hon'ble Apex Court reported in **2015 LLR 785** titled as **Gauri Shanker vs. State of Rajasthan** relied upon by Ld. Authorized Representative is also not attracted in the facts and circumstances of the case. In view of the foregoing discussions keeping in view of definition of workman as defined under Section 2(s) read with Section 2(oo) (bb) and other documentary evidence on record, claimant/petitioner has failed to prove that he was daily wage worker engaged by respondent as no muster roll prepared qua his engagement and at the same time his name also did not figure in seniority list and as such it is held that respondent had not violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Accordingly, issue no.1 is answered in negative and for similar reason issue no. 2 also answered in negative against the petitioner and in favour of respondent. In view of my findings foregoing paras, issue no.3 is answered in favour of respondent as it is not established that petitioner was daily paid worker of the respondent. Accordingly, issues no. 1 to 3 are decided in negative against the petitioner and in favour of respondent.

ISSUE NO.4

23. Ld. counsel for the respondent has raised the objection on the locus standi of the petitioner to sue but as the petitioner was employee of respondent whose services had been terminated, he could legitimately challenge the action of the respondent management had he succeeded in establishing that the action of respondent was illegal and unjustified. Thus, from facts on record, it cannot be stated that petitioner has no locus standi to sue respondent. Issue in hand is answered in negative in favour of petitioner and against the respondent.

ISSUE NO.5

24. In view of what has been held under the foregoing issues, nothing has been brought of this court, as to how this Court has no jurisdiction to entertain the claim of the petitioner. Issue in

hand is thus decided in negative and accordingly held in favour of the petitioner and against the respondent.

ISSUE NO.6

25. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. counsel representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.7

26. In view of the findings on the above issues petitioner has cause of action, moreso when he alleged termination of service by respondent illegally. Hence, this issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.8

27. It is not shown as to how the petitioner has not come to the Court with clean hands. No evidence has been led on this issue. Therefore, this issue is decided accordingly.

ISSUE NO.9

28. It is not shown by the respondent as to what facts have been withheld by the petitioner from the court. Neither any evidence has been led nor any submissions have been made in this behalf by the respondent. Hence, this issue is also decided against the respondent and in favour of the petitioner.

RELIEF

29. As a sequel to my findings on foregoing issues claim petition is dismissed, leaving the parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of November, 2015.

Sd/-
(K.K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 14/2014
 Date of Institution : 09.01.2014
 Date of Decision : 17.11.2015

Shri Parveen Kumar s/o Shri Pritam Chand, r/o VPO Dhanag, Tehsil Palampur, District Kangra, H.P.*Petitioner.*

Versus

The Director of Research, Choudhery Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur, District Kangra, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Parveen Kumar, S/O Shri Pritam Chand, R/O V.P.O. Dhanag, Tehsil Palampur, District Kangra, H.P. w.e.f. 31-03-2012 vide order dated 27.2.2012 by the Director of Research, Choudhery Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been appointed by the respondent on daily wage basis w.e.f. 10.7.2006 who had been paid the daily rate as fixed by the State Govt. from time to time. It is alleged that petitioner had continuously worked without breaks with the Agro Forestry and Organic Agriculture department upto 2007 but while appointing him no letter was issued and at the same time terms and conditions were not settled. Averments made in the claim petition further revealed that service condition of the petitioner had been changed by the respondent by engaging him as supporting staff in the same department on fixed salary w.e.f. 2007 instead of daily rate which he was receiving earlier and thus the petitioner continued to work under the Incharge of Agro Forestry and Organic Agriculture department upto 31st March, 2012. It further remains the case of petitioner that petitioner had completed 240 days in each calendar year w.e.f. 10.7.2006 to 31.3.2012 working with the same employer and was in continuous services envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called ‘the Act’ for brevity). It also remains the case of petitioner that respondent had not issued any attendance card, casual card or wage slip during period aforesaid besides maintained that the work and conduct of

petitioner was found satisfactory who had been not given any chance for complaint to the management of respondent as well as to the Incharge or say head of department. The grievances of petitioner remains that the respondent had terminated service of petitioner along-with other similarly situated employees w.e.f. 31.3.2012 to 27.2.2012 vide letter no.QSD-DR-/4-13 (Tech) 2012/1951-53, dated 22nd March, 2012. It is alleged that even at the time of termination of the services, no retrenchment compensation envisaged under Section 25-F (b) of the Act was paid and thus termination without compliance of the above stated provision is null, void ab-initio. It is alleged that despite availability of works and funds with the department, services of the petitioner had been deliberately terminated without any misconduct on his part and thus the same was in violation of principle of natural justice. Averments made in the claim petition also revealed that several persons junior to claimant/petitioner namely Vinod Kumar, Rajeev Kumar, Suresh Kumar, Krishan Kumar, Ashwani Kumar, Ashok Kumar, Om Prakash, Vipan Kumar and Ravinder Kumar had been retained in service and while doing the same, respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It also remain the case of the petitioner that after his termination, respondent had appointed fresh hands in place of petitioner namely Anurag Parmar, Santosh Kumar, Bablu, Om Prakash, Rattan Chand, Vinod Kumar, Rajeev Kumar and in this manner, petitioner had not been given an opportunity for reemployment and thus respondent had violated the provisions of Section 25-H of the Act. It is also alleged that petitioner had joined union in the year 2009 and due to union activities, petitioner's services had been unlawfully terminated by the respondent and thus act of respondent in terminating of services of petitioner was unfair labour practice as stipulated in Schedule Vth Clause 4 (a) and (b) of the Act. Not only this, petitioner also alleges discrimination on the part of respondent as one Kulwant Singh s/o Shri Nek Ram, r/o VPO Jhareth, Tehsil Palampur, District Kangra and Kartar Chand s/o Shri Hari Singh r/o Village Oder, P.O. Sungal, Tehsil Palampur, District Kangra were working on the post of supporting staff vide letter no. AFE/CSKHPK/2003/KAR/206-21/1179-94 dated 19.6.2006 in the department of Agro Forestry and Environment and both these workmen have been regularized after completion of eight years of service. The grievances of petitioner also remains that one Kumari Promila Devi d/o Shali Ram who was appointed on contract basis on fixed salary too has been regularized as clerk in regular pay scale after completion of eight years of service of State Govt. vide letter no. 66984-97 dated 19.7.2010. Thus, claiming his termination, petitioner alleges arbitrariness and act of respondent as unconstitutional in violation of mandatory provisions of the Act which has been prayed to be set aside. Accordingly, petitioner claims that his termination vide order dated 27.2.2012 w.e.f. 31.3.2012 be set aside and quashed and respondent be directed to reinstate petitioner in service with seniority, continuity in service and full back wages alongwith consequential benefits including litigation costs quantified at Rs.10,000/- besides the petitioner has also prayed for regularization service after completion of eight years of service in the regular pay scale.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections qua maintainability, locus standi, cause of action, jurisdiction, petitioner not falling within the definition of workman (diharidar) as he had never been engaged on muster roll basis in the records of the respondent university. It is specifically stipulated that the duties performed by petitioner were on contract basis for which bill of the work was raised and the same was paid at the rate not below the govt. rate. The petitioner is alleged to have been engaged for a particular period and **his employment was co-terminus with the project** and that petitioner while filing the claim petition has not approached the court with clean hands. On merits, respondent has asserted that according to policy of government of H.P. notified by Department of Finance order no. FIN.1-C(14)-1/83 dated 8.7.1998 adopted by university vide notification no. 1-2002/HPKV/97-78833-946 dated 13.11.1998 the policy/system to engage DPL i.e. daily paid labourer was banned. Thus, petitioner had never been engaged on daily paid labourer on muster roll basis in the year 2006 as has been claimed by him. It is also alleged that petitioner was engaged on contract basis in the year 2006 who used to raise bill of work performed and his wages were paid from the funds of project

funded by ICAR/GOI and that no payment were paid from the grant-in-aid of the respondent university. It is alleged that the petitioner had been engaged on daily paid labourer on muster roll basis his name would have figured in the seniority list of university circulated in 2006 and later in the year 2008. It is further alleged that an ad-hoc project on Organic Farming in hill agriculture under the plan scheme (strengthening and development of agriculture education) Niche Area of Excellence was sanctioned to the respondent university by the Government of India in which some position of supporting staff (field workers) were provided on fixed project fellowship of Rs.2,500/- per month and these position for which the petitioner had applied and was selected and offered post of supporting staff vide letter no. AFE/CSKHPKV/2006-21/480-503 dated 10.3.2008 on terms and conditions contained therein. Thereafter, again advertised the position of supporting staff/field helper on project fellowship of Rs.3500/- fixed per month for which petitioner had applied and selected and was offered post of field helper job. Thereafter, petitioner had applied offered appointment on monthly salary of Rs.2500/- in the same department and petitioner/claimant was notified termination of adhoc research project in which petitioner was last engaged the services of petitioner had been terminated on 31st March, 2012 afternoon after serving him notice dated 27.2.2012. It is alleged that petitioner served one month advance notice of termination of service before termination by the head of project in which he had been terminated. In so far as allegation of regularization of Kulwant Singh and Kartar Chand are concerneds, respondent in his reply specifically alleged that their services had been regularized according to policy of State Govt. and both these official had worked since 1994. At the same time, Smt. Promila Devi d/o Sh. Shali Ram had been stated to be appointed data entry operator on contractual basis and her services had been regularized on the basis of policy framed by the govt. of H.P. vide letter no. PER (AP)-C-F(1)-1/2010 dated 7.5.2010 and as such case of petitioner had no direct nexus with Smt. Promila Devi. Thus, while denying cause of action as stated respondent has maintained that engagement of petitioner was co-terminus with the specific project in which he was appointed as supporting field staff on fixed monthly salary till completion of project and thus no provisions of the Industrial Disputes Act was stated to have been infringed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Manoj Kumar, the then Registrar, CSKHPKV, Palampur as RW1, RW2 Shri S.P. Sharma the Dean CSK HPKV Palampur tendered/proved his affidavit Ex. RW1/A and another affidavit Ex. RW2/A, letter dated 4.10.2007 Ex. RW1/B, Ex. RW1/C copy of letter dated 25.5.2009, Ex. RW1/D notification dated 13.11.1998, Ex. RW1/E copy of letter dated 8.7.1998, office order dated 17.2.1999 Ex. RW1/F, Ex. RW1/G copy of notification dated 26.4.1999, Ex. RW2/B copy of Award dated 30.6.2014 and closed the evidence. Be it noticed that respondent through counsel vide separate statement dated 17.11.2015 has stated question concerning Ex. RA be not read in evidence as no such document relate to the present case. Ld. Authorized Representative too vide separate statement has admitted the correctness of statement so made by ld. counsel for the respondent. In view of statements made by the parties through counsel/AR, since Ex. RA did not relate to present case which has been exhibited inadvertently be now not read in evidence in favour of either parties.

7. I have heard the ld. counsel representing for the parties, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed by my ld. Predecessor on 27.02.2015 for determination:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 31.03.2012 is/was improper and unjustified as alleged? ...OPP.

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2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...OPR.
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ...OPR.
4. Whether the petitioner has no locus standi to file the case as alleged? ...OPR.
5. Whether this court has no jurisdiction to file the present case as alleged? ...OPR.
6. Whether the claim petition is not maintainable in the present form? ...OPR.
7. Whether the petitioner has no cause of action to file the present case as alleged? ...OPR.
8. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? ...OPR.
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? ...OPR.
10. Relief.
9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : Yes

Issue No.5 : No

Issue No.6 : No

Issue No.7 : No

Issue No.8 : No

Issue No.9 : No

Relief. : Claim petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that claimant/petitioner claims to have worked from year July, 2006 to 2007 as beldar (deharidar) as daily wage and thereafter from 2007 to 31.3.2012 in various projects of the respondent. Thus, claiming to have rendered more than 6 years of continuous service completing 240 days in each calendar year, the petitioner has alleged that he was illegally and unlawfully retrenched by the respondent. Before proceeding further, it would be apt to mention here that information under RTI Act Ex. P1was supplied which showed that petitioner had worked from September, 2006 to October, 2007 **on work contract basis** and later he worked for 39 days on **fixed monthly salary basis co-terminus with the project**. It is admitted case of the parties that daily paid labourer had not been engaged by the respondent department after notification dated 21.4.1999 issued by Controller of HPKV Palampur. It is equally admitted case of the parties that name of the claimant/petitioner did not figure in the seniority list of daily wage workers although respondent had circulated tentative seniority list in the year 2006 which is Ex. RW1/B and thereafter final seniority list of daily wager worker/helpers as on 31.3.2008 Ex. RW1/C is final seniority list as on 31.3.2008 in which the name of petitioner did not figure. It is equally admitted case of the petitioner that he had not raised any protest or objection qua not inclusion his name either of the list as aforesaid till date.

12. Ld. counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union**, in which Hon'ble Apex Court has held that non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act. I have gone through this judgment which is not applicable to present case as respondent had displayed as well as prepared seniority list per evidence on record and it is not material to consider at this stage reasons for non inclusion of the name of claimant/petitioner.

13. Ld. counsel for the petitioner has further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 95** titled as **Sudarshan Rajpoot vs. U.P. State Road Transport Corporation** in which Hon'ble Apex Court has dealt with aspect of termination of contractual appointment. In this case, it was held that respondent had failed to prove that the appellant was appointed on contractual basis by producing any cogent evidence. It was further held that even otherwise the appellant had worked for more than three years and 240 days in a year and his removal from service amounted to unfair labour practice. The case in hand clearly distinguishable from the case of Hon'ble Apex Court having different facts altogether before this court as petitioner is established to have worked initially on work contract basis and thereafter on fixed monthly salary. Needless to mention here that after the year 2006, the petitioner had applied time and again for seeking job of supporting field staff on fixed monthly salary and therefore he continued to be contractual employee and thus the judgment of **Sudarshan Rajpoot (2015) supra** would not be attracted in this case.

14. The crux of the problem which has cropped up for adjudication before by this court is to determine relationship between claimant/petitioner and the respondent. If petitioner is found to have worked on contractual basis as has been argued by ld. counsel for respondent, petitioner would not fall under the definition of the workman in view of specific provision envisaged under Section 2(oo) dealing with retrenchment as definition of workman is to be read with retrenchment of workman under Section 2(oo) of the Industrial Disputes Act. Section 2 (bb) provides the termination of services of workman with result of nonrenewal of contract of employment would not constitute retrenchment. In the case in hand, there is no reliable evidence on record establishing that the name of claimant/petitioner existed in muster roll and when he was engaged as field staff vide appointment offer vide Ex. RB dated 10.3.2008 subsequent offer of appointment as field staff dated 16.4.2010 Ex. RC and lastly vide Ex. RD it is established on record that petitioner had worked on contractual basis while accepting the offer of appointment by the respondent and in preceding 12 months he had not been engaged as daily wage basis. If petitioner had worked as supporting field

staff and received fixed monthly salary from 2006 to 2012, then by no stretch of imagination, he would be falling in the definition of workman and at the same time, version of claimant/petitioner that he had worked regularly and competed 240 days cannot be relied. It would be also pertinent to mention here that the petitioner claimed to have worked on daily wage basis but vide Ex. P1 information furnished under RTI revealed that he had worked monthly on daily paid basis since year September, 2006. Thus, plea of petitioner to have been engaged by respondent as daily wage basis in July, 2006 gets falsified from document referred to above.

15. Ld. counsel for the respondent has taken through cross-examination of petitioner in which he has specifically admitted that while being employed as daily wage, he had not produced any record as he has claimed that the records was with the department. He has further admitted in cross-examination that his name was not sponsored by the employment exchange. He has shown ignorance if he had ever been engaged on muster roll but maintained that from very beginning he had been working with agro forestry and organic farming department. He has admitted in cross-examination that workmen whose name was entered in the muster roll invariably gets incorporated in the seniority list but no seniority list showing petitioner's name has been provided by his department. Significantly, he has admitted that correctness of seniority list prepared by the respondent/department as he has admitted in cross-examination that he did not raise any objection qua seniority list which had been circulated twice. Not only this, petitioner admitted that after 1998 university had not engaged any one as daily paid labourer, then how he was appointed or engaged in April, 2000 cannot be accepted as correct rather it falsified the claim of petitioner. It may pertinent to state here that petitioner had put his signature on Ex. RA bill voucher vide which he had received payment besides he has also admitted on oath that on 10th March, 2008 in pursuance to office order, he was appointed as supporting staff on monthly salary of Rs.3500/- on the basis of application submitted by him. It is pertinent to state here that petitioner has admitted that he has been appointed/engaged as supporting field staff on fixed monthly salary vide Ex. RB, Ex. RC on record. He has also admitted that he had applied afresh to the respondent for engagement as supporting staff in pursuance to their circular for engagement of supporting staff. Significantly, petitioner has also admitted that his contract of employment was terminated vide Ex. RD and that all the workmen similarly situated were being engaged through contractor which goes to show that respondent had stopped direct recruitment per policy of the university.

16. Shri Manoj Kumar, registrar HPKV Palampur has shown his ignorance about the number of employees who have been regularized as he could speak so on being shown record. He has also shown his ignorance qua number of employees who were working contractual fixed monthly salary. He has further revealed in cross-examination that project ICAR was with the Central Government and he has admitted that no retrenchment compensation to the claimant/petitioner was paid but clarified that it was not required under the law. He has maintained that petitioner worked as seasonal worker in the project. On the point of regularization of Kulwant Singh and Kartar Singh this witness has clarified the same by stating that they had been engaged as daily waged workers and were regularized because they were working since 1994 and after 1998, no daily paid labourer were employed by the department. About Smt. Promila Devi RW1 has maintained that she was engaged as data entry operator on contractual basis on fixed amount as per Ex. P-2. RW1 in his cross-examination maintained that respondent had engaged Smt. Promila Devi was also casual worker and her regularization in pursuance to sanction from finance department.

17. In his affidavit RW2 Shri S.P. Sharma, Dean, CSK HPKV Palampur, District Kangra has stated that funding agencies was released budget under different heads such as salary head, non-recurring contingency and recurring contingency and labourers were engaged from time to time. Said Shri S.P. Sharma, RW2 also specifically stated that the appointment of claimant/petitioner was for a limited tenure. Even otherwise also, Ex. P4 statute of Choudhery

Sarwan Kumar H.P. Krishi Vishvavidyalaya also defines '**employees**' under Rule 1.4 dealing with definition which reads as under:-

“Employees means whole time employees (including officers and teachers) **other than part time employees, honorary employees or those paid from contingencies**”

18. Ld. counsel for respondent has contended with vehemence that even definition of 'employees' is defined under Statutes of University excludes part time employees and those paid from contingencies. RW2 Shri S.P. Sharma has stated in his affidavit that research projects are sanctioned for specified period and funding agencies provide funds for existing those projects. He has further stated that workmen/labourers are engaged in short term projects sanctioned by different funding agencies from time to time for scientific research and university has no control to extend the projects when its objectives are achieved or project is closed. Be it noticed that these facts on oath have remained un-repudiated. RW2 has also stated that project in which petitioner was appointed was closed on 31.3.2012.

19. In **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.**, the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. Thus, there could not be relationship of deharidar/workman of claimant/petitioner with respondent as salary and remuneration was paid and at the same time the name of claimant/petitioner did not appear in the muster roll as well as in the seniority list. As such, it could not be construed by any stretch of imagination that claimant/petitioner was beldar engaged on muster roll. Having not established to have worked as beldar on muster roll and respondent had succeeded in establishing that claimant/petitioner was appointed on fixed monthly salary, it would be unsafe to hold that respondent while terminating the services of petitioner had violated mandatory provisions of Section 25-F of the Industrial Disputes Act.

20. In so far as engagement of juniors to that of present claimant/petitioner is concerned, suffice would be state here that claimant/petitioner had not worked on muster roll basis and also not worked as beldar besides his name did not figure in the seniority list as observed forgoing paras. It cannot be stated that any person junior to petitioner had been retained in service and claimant/petitioner had been terminated. Thus, there is even no violation of the provisions of Section 25-G of the Industrial Disputes Act. At the same time, there can also be no violation of the provisions of Section 25-H of the Industrial Disputes Act as claimant/petitioner claimed that juniors have been engaged and he had not been offered for reemployment. At the cost of repetition, it may not be erroneous to state here that petitioner had not been appointed as beldar on muster roll whose name did not figure in the seniority list and therefore even if some new persons have been engaged, petitioner could not be stated to have been denied opportunity offer of employment within the meaning of Section 25-H of the Industrial Disputes Act.

21. Ld. Authorized Representative for the petitioner had relied upon the judgment of Hon'ble Apex Court reported in **2002 LLR 928** titled as **M/s. National Aluminum Co. Ltd. vs. Deepak Kumar Panda & Ors.** in which Hon'ble Apex Court observed that employee can legally enforce his right to continue in service particularly when junior to him were continuing to work. In the case in hand, it is not attracted as no juniors were proved to be working with the respondent. Authorized Representative for the claimant/petitioner further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** in which the Hon'ble Apex Court has held that non-preparation of seniority list or non-display of seniority list is breach of the provisions of Section 25-G of the Industrial Disputes Act. I have gone through the aforestated judgment which would not be attracted

in the case as the non inclusion of the name of claimant/petitioner in the seniority list was due to he being on contractual appointment and was not required to be shown in the seniority list. Otherwise also, seniority list had been prepared twice by respondent which has been circulated from time to time but claimant/petitioner had never taken objection as he admitted in cross-examination and thus he is now estopped to challenge the correctness of seniority list.

22. Enough has emphasized by the ld. Authorized Representative of claimant/petitioner on judgment of Hon'ble Apex Court reported in **2003 LLR 817** titled as **M/s. Bharat Heavy Electrical Limited vs. State of Uttar Pradesh & Ors.** in which Hon'ble Apex Court has held that non production of records pertaining to payments made to the gardeners either by the company or the contractor will lead to drawing of adverse inference in establishing direct relationship of employer and employees between the principal employer and the workers alleged to be engaged by the contractor more so when photocopies for attendance and payments made have been produced by the gardeners. I have gone through this judgment but the case in hand, no record has been produced. Be it noticed that respondent has fairly produced all relevant records concerning claimant/petitioner moreso when there has been no objection from side of petitioner that documents sought be produced have not been produced or withheld and as such judgment 2003 (supra) does not come to the rescue of the claimant/petitioner. For similar reason, judgment of Hon'ble Apex Court reported in **2015 LLR 785** titled as **Gauri Shanker vs. State of Rajasthan** relied upon by Ld. Authorized Representative is also not attracted in the facts and circumstances of the case. In view of the foregoing discussions keeping in view of definition of workman as defined under Section 2(s) read with Section 2(oo) (bb) and other documentary evidence on record, claimant/petitioner has failed to prove that he was daily wage worker engaged by respondent as no muster roll was prepared qua his engagement and at the same time his name also did not figure in seniority list and as such it is held that respondent had not violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Accordingly, issue no.1 is answered in negative and for similar reason issue no. 2 also answered in negative against the petitioner and in favour of respondent. In view of my findings foregoing paras, issue no.3 is answered in favour of respondent as it is not established that petitioner was daily paid worker of the respondent. Accordingly, issues no. 1 to 3 are decided in negative against the petitioner and in favour of respondent.

ISSUE NO.4

23. Ld. counsel for the respondent has raised the objection on the locus standi of the petitioner to sue but as the petitioner was employee of respondent whose services had been terminated, he could legitimately challenge the action of the respondent management had he succeeded in establishing that the action of respondent was illegal and unjustified. Thus, from facts on record, it cannot be stated that petitioner has no locus standi to sue respondent. Issue in hand is answered in negative in favour of petitioner and against the respondent.

ISSUE NO.5

24. In view of what has been held under the foregoing issues, nothing has been brought of this court, as to how this Court has no jurisdiction to entertain the claim of the petitioner. Issue in hand is thus decided in negative and accordingly held in favour of the petitioner and against the respondent.

ISSUE NO.6

25. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. counsel representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no

inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.7

26. In view of the findings on the above issues petitioner has cause of action, moreso when he alleged termination of service by respondent illegally. Hence, this issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.8

27. It is not shown as to how the petitioner has not come to the Court with clean hands. No evidence has been led on this issue. Therefore, this issue is decided accordingly.

ISSUE NO.9

28. It is not shown by the respondent as to what facts have been withheld by the petitioner from the court. Neither any evidence has been led nor any submissions have been made in this behalf by the respondent. Hence, this issue is also decided against the respondent and in favour of the petitioner.

RELIEF

29. As a sequel to my findings on foregoing issues claim petition is dismissed, leaving the parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of November, 2015.

Sd/-
(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No.	:	106/2014
Date of Institution	:	26.02.2014
Date of Decision	:	17.11.2015

Shri Shammi Kumar s/o Shri Sarwan Kumar, r/o Village Holsu, P.O. Deogran, Tehsil Palampur, District Kangra, H.P.Petitioner.

Versus

The Director of Research, Choudhery Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur, District Kangra, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Rahul Gupta, Adv

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Shammi Kumar S/O Shri Sarwan Kumar, R/O Village Holsu, P.O. Deoran, Tehsil Palampur, District Chamba, H.P. w.e.f. 31.03.2012 vide order No. QSD/OA/CSKHPKV/206-56/257-85 dated 27.02.2012 by the Director of Research, Choudhery Sarwan Kumar, Himachal Pradesh Krishi Vishvavidyalaya, Palampur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been appointed by the respondent on daily wage basis w.e.f. 20.4.2006 who had been paid the daily rate as fixed by the State Govt. from time to time. It is alleged that petitioner had continuously worked without breaks with the Agro Forestry and Organic Agriculture department upto October, 2010 but while appointing him no letter was issued and at the same time terms and conditions were not settled. Averments made in the claim petition further revealed that service condition of the petitioner had been changed by the respondent by engaging him as supporting staff in the same department on fixed salary w.e.f. November, 2007 instead of daily rate which he was receiving earlier and thus the petitioner continued to work under the Incharge of Agro Forestry and Organic Agriculture department upto 31st March, 2012. It further remains the case of petitioner that petitioner had completed 240 days in each calendar year w.e.f. 20.4.2006 to 31.3.2012 working with the same employer and was in continuous services envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called ‘the Act’ for brevity). It also remains the case of petitioner that respondent had not issued any attendance card, casual card or wage slip during period aforesaid besides maintained that the work and conduct of petitioner was found satisfactory who had been not given any chance for complaint to the management of respondent as well as to the Incharge or say head of department. The grievances of petitioner remains that the respondent had terminated service of petitioner along-with other similarly situated employees w.e.f. 31.3.2012 to 27.2.2012 vide letter no.QSD-DR-/4-13 (Tech) 2012/1951-53, dated 22nd March, 2012. It is alleged that even at the time of termination of the services, no retrenchment compensation envisaged under Section 25-F (b) of the Act was paid and thus termination without compliance of the above stated provision is null, void ab-initio. It is alleged that despite availability of works and funds with the department, services of the petitioner had been deliberately terminated without any misconduct on his part and thus the same was in violation of principle of natural justice. Averments made in the claim petition

also revealed that several persons junior to claimant/petitioner namely Vinod Kumar, Rajeev Kumar, Suresh Kumar, Krishan Kumar, Ashwani Kumar, Ashok Kumar, Om Prakash, Vipan Kumar and Ravinder Kumar had been retained in service and while doing the same, respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It also remain the case of the petitioner that after his termination, respondent had appointed fresh hands in place of petitioner namely Anurag Parmar, Santosh Kumar, Bablu, Om Prakash, Rattan Chand, Vinod Kumar, Rajeev Kumar and in this manner, petitioner had not been given an opportunity for reemployment and thus respondent had violated the provisions of Section 25-H of the Act. It is also alleged that petitioner had joined union in the year 2009 and due to union activities, petitioner's services had been unlawfully terminated by the respondent and thus act of respondent in terminating of services of petitioner was unfair labour practice as stipulated in Schedule Vth Clause 4 (a) and (b) of the Act. Not only this, petitioner also alleges discrimination on the part of respondent as one Kulwant Singh s/o Shri Nek Ram, r/o VPO Jhareth, Tehsil Palampur, District Kangra and Kartar Chand s/o Shri Hari Singh r/o Village Oder, P.O. Sungal, Tehsil Palampur, District Kangra were working on the post of supporting staff vide letter no. AFE/CSKHPK/2003/KAR/206-21/1179-94 dated 19.6.2006 in the department of Agro Forestry and Environment and both these workmen have been regularized after completion of eight years of service. The grievances of petitioner also remains that one Kumari Promila Devi d/o Shali Ram who was appointed on contract basis on fixed salary too has been regularized as clerk in regular pay scale after completion of eight years of service of State Govt. vide letter no. 66984-97 dated 19.7.2010. Thus, claiming his termination, petitioner alleges arbitrariness and act of respondent as unconstitutional in violation of mandatory provisions of the Act which has been prayed to be set aside. Accordingly, petitioner claims that his termination vide order dated 27.2.2012 w.e.f. 31.3.2012 be set aside and quashed and respondent be directed to reinstate petitioner in service with seniority, continuity in service and full back wages alongwith consequential benefits including litigation costs quantified at Rs.10,000/- besides the petitioner has also prayed for regularization service after completion of eight years of service in the regular pay scale.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections qua maintainability, locus standi, cause of action, jurisdiction, petitioner not falling within the definition of workman (diharidar) as he had never been engaged on muster roll basis in the records of the respondent university. It is specifically stipulated that the duties performed by petitioner were on contract basis for which bill of the work was raised and the same was paid at the rate not below the govt. rate. The petitioner is alleged to have been engaged for a particular period and **his employment was co-terminus with the project** and that petitioner while filing the claim petition has not approached the court with clean hands. On merits, respondent has asserted that according to policy of government of H.P. notified by Department of Finance order no. FIN.1-C(14)-1/83 dated 8.7.1998 adopted by university vide notification no. 1-2002/HPKV/97-78833-946 dated 13.11.1998 the policy/system to engage DPL i.e. daily paid labourer was banned. Thus, petitioner had never been engaged on daily paid labourer on muster roll basis in the year 2006 as has been claimed by him. It is also alleged that petitioner was engaged on contract basis in the year 2006 who used to raise bill of work performed and his wages were paid from the funds of project funded by ICAR/GOI and that no payment were paid from the grant-in-aid of the respondent university. It is alleged that the petitioner had been engaged on daily paid labourer on muster roll basis his name would have figured in the seniority list of university circulated in 2006 and later in the year 2008. It is further alleged that an ad-hoc project on Organic Farming in hill agriculture under the plan scheme (strengthening and development of agriculture education) Niche Area of Excellence was sanctioned to the respondent university by the Government of India in which some position of supporting staff (field workers) were provided on fixed project fellowship of Rs.2,500/- per month and these position for which the petitioner had applied and was selected and offered post of supporting staff vide letter no. AFE/CSKHPKV/2006-21/480-503 dated 10.3.2008 on terms and conditions contained therein. Thereafter, again advertised the position of supporting staff/field

helper on project fellowship of Rs.3500/- fixed per month for which petitioner had applied and selected and was offered post of field helper job. Thereafter, petitioner had applied offered appointment on monthly salary of Rs.2500/- in the same department and petitioner/claimant was notified termination of adhoc research project in which petitioner was last engaged the services of petitioner had been terminated on 31st March, 2012 afternoon after serving him notice dated 27.2.2012. It is alleged that petitioner served one month advance notice of termination of service before termination by the head of project in which he had been terminated. In so far as allegation of regularization of Kulwant Singh and Kartar Chand are concerneds, respondent in his reply specifically alleged that their services had been regularized according to policy of State Govt. and both these official had worked since 1994. At the same time, Smt. Promila Devi d/o Sh. Shali Ram had been stated to be appointed data entry operator on contractual basis and her services had been regularized on the basis of policy framed by the govt. of H.P. vide letter no. PER (AP)-C-F(1)-1/2010 dated 7.5.2010 and as such case of petitioner had no direct nexus with Smt. Promila Devi. Thus, while denying cause of action as stated respondent has maintained that engagement of petitioner was co-terminus with the specific project in which he was appointed as supporting field staff on fixed monthly salary till completion of project and thus no provisions of the Industrial Disputes Act was stated to have been infringed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Manoj Kumar, the then Registrar, CSKHPKV, Palampur as RW1, RW2 Shri S.P. Sharma the Dean CSK HPKV Palampur tendered/proved his affidavit Ex. RW1/A and another affidavit Ex. RW2/A, letter dated 4.10.2007 Ex. RW1/B, Ex. RW1/C copy of letter dated 25.5.2009, Ex. RW1/D notification dated 13.11.1998, Ex. RW1/E copy of letter dated 8.7.1998, office order dated 17.2.1999 Ex. RW1/F, Ex. RW1/G copy of office order dated 19.7.2010, Ex. RW2/B copy of Award dated 30.6.2014 and closed the evidence.

7. I have heard the ld. counsel representing for the parties, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed by my ld. Predecessor on 27.02.2015 for determination:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 31.03.2012 is/was improper and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ...OPR.
4. Whether the petitioner has no locus standi to file the case as alleged? ...OPR.
5. Whether this court has no jurisdiction to file the present case as alleged? ...OPR.
6. Whether the claim petition is not maintainable in the present form? ...OPR.
7. Whether the petitioner has no cause of action to file the present case as alleged? ...OPR.

8. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? ...OPR.
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? ...OPR.
10. Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : Yes

Issue No.5 : No

Issue No.6 : No

Issue No.7 : No

Issue No.8 : No

Issue No.9 : No

Relief. : Claim petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that claimant/petitioner claims to have worked from year 2006 to 31.10.2007 as beldar (deharidar) as daily wage and thereafter from 01.11.2007 to 31.3.2012 in various projects of the respondent. Thus, claiming to have rendered more than 6 years of continuous service completing 240 days in each calendar year, the petitioner has alleged that he was illegally and unlawfully retrenched by the respondent. Before proceeding further, it would be apt to mention here that information under RTI Act Ex. P1was supplied which showed that petitioner had worked from 2006 to 2007 **on work contract basis** and later he worked for 89 days **on fixed monthly salary basis co-terminus with the project**. It is admitted case of the parties that daily paid labourer had not been engaged by the respondent department after notification dated 21.4.1999 issued by Controller of HPKV Palampur. It is equally admitted case of the parties that name of the claimant/petitioner did not figure in the seniority list of daily wage workers although respondent had circulated tentative seniority list in the year 2006 which is Ex. RW1/B and thereafter final seniority list of daily wager worker/helpers as on 31.3.2008 Ex. RW1/C is final seniority list as on 31.3.2008 in which the name of petitioner did not figure. It is equally admitted case of the petitioner that he had not raised any protest or objection qua not inclusion his name either of the list as aforesaid till date.

12. Ld. counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union**, in which Hon'ble Apex Court has held that non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act. I have gone through this judgment which is not applicable to present case as respondent had displayed as well as prepared seniority list per evidence on record and it is not material to consider at this stage reasons for non inclusion of the name of claimant/petitioner.

13. Ld. counsel for the petitioner has further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 95** titled as **Sudarshan Rajpoot vs. U.P. State Road Transport Corporation** in which Hon'ble Apex Court has dealt with aspect of termination of contractual appointment. In this case, it was held that respondent had failed to prove that the appellant was appointed on contractual basis by producing any cogent evidence. It was further held that even otherwise the appellant has worked for more than three years and 240 days in a year and his removal from service amounted to unfair labour practice. The case in hand clearly distinguishable from the case of Hon'ble Apex Court having different facts altogether before this court as petitioner is established to have worked initially on work contract basis and thereafter on fixed monthly salary. Needless to mention here that after the year 2006, the petitioner had applied time and again for seeking job of supporting field staff on fixed monthly salary and therefore he continued to be contractual employee and thus the judgment of **Sudarshan Rajpoot (2015) supra** would not be attracted in this case.

14. The crux of the problem which has cropped up for adjudication before by this court is to determine relationship between claimant/petitioner and the respondent. If petitioner is found to have worked on contractual basis as has been argued by ld. counsel for respondent, petitioner would not fall under the definition of the workman in view of specific provision envisaged under Section 2(oo) dealing with retrenchment as definition of workman is to be read with retrenchment of workman under Section 2(oo) of the Industrial Disputes Act. Section 2 (bb) provides the termination of services of workman with result of nonrenewal of contract of employment would not constitute retrenchment. In the case in hand, there is no reliable evidence on record establishing that the name of claimant/petitioner existed in muster roll and when he was engaged as field staff vide appointment offer vide Ex. RB dated 10.3.2008 subsequent offer of appointment as field staff dated 16.4.2010 Ex. RC and lastly vide Ex. RD it is established on record that petitioner had worked on contractual basis while accepting the offer of appointment by the respondent and in preceding 12 months he had not been engaged as daily wage basis. If petitioner had worked as supporting field staff and received fixed monthly salary from 2006 to 2012, then by no stretch of imagination, he would be falling in the definition of workman and at the same time, version of claimant/petitioner that he had worked regularly and competed 240 days cannot be relied. It would be also pertinent to mention here that the petitioner claimed to have worked on daily wage basis but vide Ex. P1 information furnished under RTI revealed that he had worked monthly on daily paid basis since year 2007. Thus, plea of petitioner to have been engaged by respondent as daily wage basis in 2006 gets falsified from document referred to above.

15. Ld. counsel for the respondent has taken through cross-examination of petitioner in which he has specifically admitted that while being employed as daily wage, he had not produced any record as he has claimed that the records was with the department. He has further admitted in cross-examination that his name was not sponsored by the employment exchange. He has shown ignorance if he had ever been engaged on muster roll but maintained that from very beginning he had been working with agro forestry and organic farming department. He has admitted in cross-examination that workmen whose name was entered in the muster roll invariably gets incorporated in the seniority list but no seniority list showing petitioner's name has been provided by his department. Significantly, he has admitted that correctness of seniority list prepared by the

respondent/department as he has admitted in cross-examination that he did not raise any objection qua seniority list which had been circulated twice. Not only this, petitioner admitted that after 1998 university had not engaged any one as daily paid labourer, then how he was appointed or engaged in April, 2000 cannot be accepted as correct rather it falsified the claim of petitioner. It may pertinent to state here that petitioner had put his signature on Ex. RA bill voucher vide which he had received payment besides he has also admitted on oath that on 10th March, 2008 in pursuance to office order, he was appointed as supporting staff on monthly salary of Rs.3500/- on the basis of application submitted by him. Similarly, vide Ex. RB, Ex. RC petitioner was appointed on fixed monthly salary however vide Ex. RD his contract of employment was terminated consequent upon termination of project in which petitioner worked and other important aspect which goes to root of the case as admitted by the claimant/petitioner on oath is that all workmen similarly situated were being engaged through contractor which goes to show that respondent/employer had stopped direct recruitment and workmen were being supplied by the contractor.

16. Shri Manoj Kumar, registrar HPKV Palampur has shown his ignorance about the number of employees who have been regularized as he could speak so on being shown record. He has also shown his ignorance qua number of employees who were working contractual fixed monthly salary. He has further revealed in cross-examination that project ICAR was with the Central Government and he has admitted that no retrenchment compensation to the claimant/petitioner was paid but clarified that it was not required under the law. He has maintained that petitioner worked as seasonal worker in the project. On the point of regularization of Kulwant Singh and Kartar Singh this witness has clarified the same by stating that they had been engaged as daily waged workers and were regularized because they were working since 1994 and after 1998, no daily paid labourer were employed by the department. About Smt. Promila Devi RW1 has maintained that she was engaged as data entry operator on contractual basis on fixed amount as per Ex. P-2. RW1 in his cross-examination maintained that respondent had engaged Smt. Promila Devi was also casual worker and her regularization in pursuance to sanction from finance department.

17. In his affidavit RW2 Shri S.P. Sharma, Dean, CSK HPKV Palampur, District Kangra has stated that funding agencies was released budget under different heads such as salary head, non-recurring contingency and recurring contingency and labourers were engaged from time to time. Said Shri S.P. Sharma, RW2 also specifically stated that the appointment of claimant/petitioner was for a limited tenure. Even otherwise also, Ex. P4 statute of Choudhery Sarwan Kumar H.P. Krishi Vishvavidyalaya also defines '**employees**' under Rule 1.4 dealing with definition which reads as under:-

"Employees means whole time employees (including officers and teachers) **other than part time employees, honorary employees or those paid from contingencies"**

18. Ld. counsel for respondent has contended with vehemence that even definition of 'employees' is defined under Statutes of University excludes part time employees and those paid from contingencies. RW2 Shri S.P. Sharma has stated in his affidavit that research projects are sanctioned for specified period and funding agencies provide funds for existing those projects. He has further stated that workmen/labourers are engaged in short term projects sanctioned by different funding agencies from time to time for scientific research and university has no control to extend the projects when its objectives are achieved or project is closed. Be it noticed that these facts on oath have remained un-repudiated. RW2 has also stated that project in which petitioner was appointed was closed on 31.3.2012.

19. In **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.**, the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-

availability of funds the temporary employees engaged in the project were not entitled to regularization. Thus, there could not be relationship of deharidar/workman of claimant/petitioner with respondent as salary and remuneration was paid and at the same time the name of claimant/petitioner did not appear in the muster roll as well as in the seniority list. As such, it could not be construed by any stretch of imagination that claimant/petitioner was beldar engaged on muster roll. Having not established to have worked as beldar on muster roll and respondent had succeeded in establishing that claimant/petitioner was appointed on fixed monthly salary, it would be unsafe to hold that respondent while terminating the services of petitioner had violated mandatory provisions of Section 25-F of the Industrial Disputes Act.

20. In so far as engagement of juniors to that of present claimant/petitioner is concerned, suffice would be state here that claimant/petitioner had not worked on muster roll basis and also not worked as beldar besides his name did not figure in the seniority list as observed forgoing paras. It cannot be stated that any person junior to petitioner had been retained in service and claimant/petitioner had been terminated. Thus, there is even no violation of the provisions of Section 25-G of the Industrial Disputes Act. At the same time, there can also be no violation of the provisions of Section 25-H of the Industrial Disputes Act as claimant/petitioner claimed that juniors have been engaged and he had not been offered for reemployment. At the cost of repetition, it may not be erroneous to state here that petitioner had not been appointed as beldar on muster roll whose name did not figure in the seniority list and therefore even if some new persons have been engaged, petitioner could not be stated to have been denied opportunity offer of employment within the meaning of Section 25-H of the Industrial Disputes Act.

21. Ld. Authorized Representative for the petitioner had relied upon the judgment of Hon'ble Apex Court reported in **2002 LLR 928** titled as **M/s. National Aluminum Co. Ltd. vs. Deepak Kumar Panda & Ors.** in which Hon'ble Apex Court observed that employee can legally enforce his right to continue in service particularly when junior to him were continuing to work. In the case in hand, it is not attracted as no juniors were proved to be working with the respondent. Authorized Representative for the claimant/petitioner further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** in which the Hon'ble Apex Court has held that non-preparation of seniority list or non-display of seniority list is breach of the provisions of Section 25-G of the Industrial Disputes Act. I have gone through the aforestated judgment which would not be attracted in the case as the non inclusion of the name of claimant/petitioner in the seniority list was due to he being on contractual appointment and was not required to be shown in the seniority list. Otherwise also, seniority list had been prepared twice by respondent which has been circulated from time to time but claimant/petitioner had never taken objection as he admitted in cross-examination and thus he is now estopped to challenge the correctness of seniority list.

22. Enough has emphasized by the ld. Authorized Representative of claimant/petitioner on judgment of Hon'ble Apex Court reported in **2003 LLR 817** titled as **M/s. Bharat Heavy Electrical Limited vs. State of Uttar Pradesh & Ors.** in which Hon'ble Apex Court has held that non production of records pertaining to payments made to the gardeners either by the company or the contractor will lead to drawing of adverse inference in establishing direct relationship of employer and employees between the principal employer and the workers alleged to be engaged by the contractor more so when photocopies for attendance and payments made have been produced by the gardeners. I have gone through this judgment but the case in hand no record has been **produced except the one bill by the claimant/petitioner**. Be it noticed that respondent has fairly produced all relevant records concerning claimant/petitioner moreso when there has been no objection from side of petitioner that documents sought be produced have not been produced or withheld and as such judgment 2003 (supra) does not come to the rescue of the claimant/petitioner. For similar reason, judgment of Hon'ble Apex Court reported in **2015 LLR 785** titled as **Gauri**

Shanker vs. State of Rajasthan relied upon by Ld. Authorized Representative is also not attracted in the facts and circumstances of the case. In view of the foregoing discussions keeping in view of definition of workman as defined under Section 2(s) read with Section 2(oo) (bb) and other documentary evidence on record, claimant/petitioner has failed to prove that he was daily wage worker engaged by respondent as no muster roll was prepared qua his engagement and at the same time his name also did not figure in seniority list and as such it is held that respondent had not violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Accordingly, issue no.1 is answered in negative and for similar reason issue no. 2 also answered in negative against the petitioner and in favour of respondent. In view of my findings foregoing paras, issue no.3 is answered in favour of respondent as it is not established that petitioner was daily paid worker of the respondent. Accordingly, issues no. 1 to 3 are decided in negative against the petitioner and in favour of respondent.

ISSUE NO.4

23. Ld. counsel for the respondent has raised the objection on the locus standi of the petitioner to sue but as the petitioner was employee of respondent whose services had been terminated, he could legitimately challenge the action of the respondent management had he succeeded in establishing that the action of respondent was illegal and unjustified. Thus, from facts on record, it cannot be stated that petitioner has no locus standi to sue respondent. Issue in hand is answered in negative in favour of petitioner and against the respondent.

ISSUE NO.5

24. In view of what has been held under the foregoing issues, nothing has been brought of this court, as to how this Court has no jurisdiction to entertain the claim of the petitioner. Issue in hand is thus decided in negative and accordingly held in favour of the petitioner and against the respondent.

ISSUE NO.6

25. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. counsel representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.7

26. In view of the findings on the above issues petitioner has cause of action, moreso when he alleged termination of service by respondent illegally. Hence, this issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.8

27. It is not shown as to how the petitioner has not come to the Court with clean hands. No evidence has been led on this issue. Therefore, this issue is decided accordingly.

ISSUE NO.9

28. It is not shown by the respondent as to what facts have been withheld by the petitioner from the court. Neither any evidence has been led nor any submissions have been made in this behalf by the respondent. Hence, this issue is also decided against the respondent and in favour of the petitioner.

RELIEF

29. As a sequel to my findings on foregoing issues claim petition is dismissed, leaving the parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of November, 2015.

Sd/-
(K. K. SHARMA)
*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 107/2014
Date of Institution : 26.02.2014
Date of Decision : 17.11.2015

Shri Suresh Chand s/o Shri Bhim Singh, r/o Village Rangru, P.O. Nadli, Tehsil Palampur, District Kangra, H.P.Petitioner.

Versus

The Director of Research, Choudhery Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur, District Kangra, H.P.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Suresh Chand S/O Shri Bhim Singh, R/O Village Rangru, P.O. Nadli, Tehsil Palampur, District Kangra, H.P. w.e.f. 31.03.2012 vide

order No. QSD/OA/CSKHPKV/206-56/257-85 dated 27.02.2012 by the Director of Research, Choudhery Sarwan Kumar, Himachal Pradesh Krishi Vishvavidyalaya, Palampur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been appointed by the respondent on daily wage basis w.e.f. April, 2000 who had been paid the daily rate as fixed by the State Govt. from time to time. It is alleged that petitioner had continuously worked without breaks with the Agro Forestry and Organic Agriculture department upto May, 2006 but while appointing him, no letter was issued and at the same time terms and conditions were not settled. Averments made in the claim petition further revealed that service condition of the petitioner had been changed by the respondent by engaging him as supporting staff in the same department on fixed salary w.e.f. June, 2006 instead of daily rate which he was receiving earlier and thus the petitioner continued to work under the Incharge of Agro Forestry and Organic Agriculture department upto 31st March, 2012. It further remains the case of petitioner that petitioner had completed 240 days in each calendar year w.e.f. April, 2000 to 31.3.2012 working with the same employer and was in continuous services envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). It also remains the case of petitioner that respondent had not issued any attendance card, casual card or wage slip during period aforesaid besides maintained that the work and conduct of petitioner was found satisfactory who had been not given any chance for complaint to the management of respondent as well as to the Incharge or say head of department. The grievances of petitioner remains that the respondent had terminated service of petitioner along-with other similarly situated employees w.e.f. 31.3.2012 to 27.2.2012 vide letter no.QSD-DR-/4-13 (Tech) 2012/1951-53, dated 22nd March, 2012. It is alleged that even at the time of termination of the services, no retrenchment compensation envisaged under Section 25-F (b) of the Act was paid and thus termination without compliance of the above stated provision is null, void ab-initio. It is alleged that despite availability of works and funds with the department, services of the petitioner had been deliberately terminated without any misconduct on his part and thus the same was in violation of principle of natural justice. Averments made in the claim petition also revealed that several persons junior to claimant/petitioner namely Vinod Kumar, Rajeev Kumar, Suresh Kumar, Krishan Kumar, Ashwani Kumar, Ashok Kumar, Om Prakash, Vipan Kumar and Ravinder Kumar had been retained in service and while doing the same, respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It also remain the case of the petitioner that after his termination, respondent had appointed fresh hands in place of petitioner namely Anurag Parmar, Santosh Kumar, Bablu, Om Prakash, Rattan Chand, Vinod Kumar, Rajeev Kumar and in this manner, petitioner had not been given an opportunity for reemployment and thus respondent had violated the provisions of Section 25-H of the Act. It is also alleged that petitioner had joined union in the year 2009 and due to union activities, petitioner's services had been unlawfully terminated by the respondent and thus act of respondent in terminating of services of petitioner was unfair labour practice as stipulated in Schedule Vth Clause 4 (a) and (b) of the Act. Not only this, petitioner also alleges discrimination on the part of respondent as one Kulwant Singh s/o Shri Nek Ram, r/o VPO Jhareth, Tehsil Palampur, District Kangra and Kartar Chand s/o Shri Hari Singh r/o Village Oder, P.O. Sungal, Tehsil Palampur, District Kangra were working on the post of supporting staff vide letter no. AFE/SKHPK/2003/KAR/206-21/1179-94 dated 19.6.2006 in the department of Agro Forestry and Environment and both these workmen have been regularized after completion of eight years of service. The grievances of petitioner also remains that one Kumari Promila Devi d/o Shali Ram who was appointed on contract basis on fixed salary too has been regularized as clerk in regular

pay scale after completion of eight years of service of State Govt. vide letter no. 66984-97 dated 19.7.2010. Thus, claiming his termination, petitioner alleges arbitrariness and act of respondent as unconstitutional in violation of mandatory provisions of the Act which has been prayed to be set aside. Accordingly, petitioner claims that his termination vide order dated 27.2.2012 w.e.f. 31.3.2012 be set aside and quashed and respondent be directed to reinstate petitioner in service with seniority, continuity in service and full back wages alongwith consequential benefits including litigation costs quantified at Rs.10,000/- besides the petitioner has also prayed for regularization service after completion of eight years of service in the regular pay scale.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections qua maintainability, locus standi, cause of action, jurisdiction, petitioner not falling within the definition of workman (diharidar) as he had never been engaged on muster roll basis in the records of the respondent university. It is specifically stipulated that the duties performed by petitioner were on contract basis for which bill of the work was raised and the same was paid at the rate not below the govt. rate. The petitioner is alleged to have been engaged for a particular period and **his employment was co-terminus with the project** and that petitioner while filing the claim petition has not approached the court with clean hands. On merits, respondent has asserted that according to policy of government of H.P. notified by Department of Finance order no. FIN.1-C(14)-1/1983 dated 8.7.1998 adopted by university vide notification no. 1-2002/HPKV/97-78833-946 dated 13.11.1998 the policy/system to engage DPL i.e. daily paid labourer was banned. Thus, petitioner had never been engaged on daily paid labourer on muster roll basis in the year 2000 as has been claimed by him. It is also alleged that petitioner was engaged on contract basis in the year 2003 who used to raise bill of work performed and his wages were paid from the funds of project funded by ICAR/GOI and that no payment were paid from the grant-in-aid of the respondent university. It is alleged that the petitioner had been engaged on daily paid labourer on muster roll basis his name would have figured in the seniority list of university circulated in 2006 and later in the year 2008. It is further alleged that an ad-hoc project on Organic Farming in hill agriculture under the plan scheme (strengthening and development of agriculture education) Niche Area of Excellence was sanctioned to the respondent university by the Government of India in which some position of supporting staff (field workers) were provided on fixed project fellowship of Rs.2,500/- per month and these position for which the petitioner had applied and was selected and offered post of supporting staff vide letter no. AFE/CSKHPKV/2003/CAR-2006-21/1179-94 dated 19.6.2006 on terms and conditions contained therein. Thereafter, again advertised the position of supporting staff/field helper on project fellowship of Rs.4000/- fixed per month for which petitioner had applied and selected and was offered post of field helper job. Thereafter, petitioner had applied offered appointment on monthly salary of Rs.2500/- in the same department and petitioner/claimant was notified termination of adhoc research project in which petitioner was last engaged the services of petitioner had been terminated on 31st March, 2012 afternoon after serving him notice dated 27.2.2012. It is alleged that petitioner served one month advance notice of termination of service before termination by the head of project in which he had been terminated. In so far as allegation of regularization of Kulwant Singh and Kartar Chand are concerned, respondent in his reply specifically alleged that their services had been regularized according to policy of State Govt. and both these official had worked since 1994. At the same time, Smt. Promila Devi d/o Sh. Shali Ram had been stated to be appointed data entry operator on contractual basis and her services had been regularized on the basis of policy framed by the govt. of H.P. vide letter no. PER (AP)-C-F(1)-1/2010 dated 7.5.2010 and as such case of petitioner had no direct nexus with Smt. Promila Devi. Thus, while denying cause of action as stated respondent has maintained that engagement of petitioner was co-terminus with the specific project in which he was appointed as supporting field staff on fixed monthly salary till completion of project and thus no provisions of the Industrial Disputes Act was stated to have been infringed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Manoj Kumar, the then Registrar, CSKHPKV, Palampur as RW1, RW2 Shri S.P. Sharma the Dean CSK HPKV Palampur tendered/proved his affidavit Ex. RW1/A and another affidavit EX. RW2/A, letter dated 4.10.2007 Ex. RW1/B, Ex. RW1/C copy of letter dated 25.5.2009, Ex. RW1/D notification dated 13.11.1998, Ex. RW1/E copy of letter dated 8.7.1998, office order dated 17.2.1999 Ex. RW1/F, Ex. RW2/B copy of Award dated 30.6.2014 and closed the evidence.

7. I have heard the ld. counsel representing for the parties, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed by my ld. Predecessor on 27.02.2015 for determination:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 31.03.2012 is/was improper and unjustified as alleged? ...OPP.
 2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...OPP.
 3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ...OPR.
 4. Whether the petitioner has no locus standi to file the case as alleged? ...OPR.
 5. Whether this court has no jurisdiction to file the present case as alleged? ...OPR.
 6. Whether the claim petition is not maintainable in the present form? ...OPR.
 7. Whether the petitioner has no cause of action to file the present case as alleged? ...OPR.
 8. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? ...OPR.
 9. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? ...OPR.
 10. Relief.
9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : Yes

Issue No.5 : No

Issue No.6 : No

Issue No.7 : No

Issue No.8 : No

Issue No.9 : No

Relief. : Claim petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that claimant/petitioner claims to have worked from year 2000 to 2006 as beldar (deharidar) as daily wage and thereafter from 2006 to 31.3.2012 in various projects of the respondent. Thus, claiming to have rendered more than 12 years of continuous service completing 240 days in each calendar year, the petitioner has alleged that he was illegally and unlawfully retrenched by the respondent. Before proceeding further, it would be apt to mention here that information under RTI Act Ex. P1was supplied which showed that petitioner had worked from 2003 to 2006 **on work contract basis** and later he worked for 182 days, 340 days, 189 days and 173 days **on fixed monthly salary basis co-terminus with the project**. It is admitted case of the parties that daily paid labourer had not been engaged by the respondent department after notification dated 21.4.1999 issued by Controller of HPKV Palampur. It is equally admitted case of the parties that name of the claimant/petitioner did not figure in the seniority list of daily wage workers although respondent had circulated tentative seniority list in the year 2006 which is Ex. RW1/B and thereafter final seniority list of daily wager worker/helpers as on 31.3.2008 Ex. RW1/C is final seniority list as on 31.3.2008 in which the name of petitioner did not figure. It is equally admitted case of the petitioner that he had not raised any protest or objection qua not inclusion his name either of the list as aforestated till date. 12. Ld. counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union**, in which Hon'ble Apex Court has held that non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act. I have gone through this judgment which is not applicable to present case as respondent had displayed as well as prepared seniority list per evidence on record and it is not material to consider at this stage reasons for non inclusion of the name of claimant/petitioner.

13. Ld. counsel for the petitioner has further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 95** titled as **Sudarshan Rajpoot vs. U.P. State Road Transport Corporation** in which Hon'ble Apex Court has dealt with aspect of termination of contractual appointment. In this case, it was held that respondent had failed to prove that the appellant was appointed on contractual basis by producing any cogent evidence. It was further held that even otherwise the appellant has worked for more than three years and 240 days in a year and his removal from service amounted to unfair labour practice. The case in hand clearly distinguishable from the case of Hon'ble Apex Court having different facts altogether before this court as petitioner is established to have worked initially on work contract basis and thereafter on fixed monthly salary. Needless to mention here that after the year 2006, the petitioner had applied time and again for seeking job of supporting field staff on fixed monthly salary and therefore he continued to be contractual employee and thus the judgment of **Sudarshan Rajpoot (2015) supra** would not be attracted in this case.

14. The crux of the problem which has cropped up for adjudication before by this court is to determine relationship between claimant/petitioner and the respondent. If petitioner is found to have worked on contractual basis as has been argued by ld. counsel for respondent, petitioner would not fall under the definition of the workman in view of specific provision envisaged under Section 2(oo) dealing with retrenchment as definition of workman is to be read with retrenchment of workman under Section 2(oo) of the Industrial Disputes Act. Section 2 (bb) provides the termination of services of workman with result of nonrenewal of contract of employment would not constitute retrenchment. In the case in hand, there is no reliable evidence on record establishing that the name of claimant/petitioner existed in muster roll and when he was engaged as field staff vide appointment offer vide Ex. RB dated 19.6.2006 subsequent offer of appointment as field staff dated 16.4.2010 Ex. RC and lastly vide Ex. RD it is established on record that petitioner had worked on contractual basis while accepting the offer of appointment by the respondent and in preceding 12 months he had not been engaged as daily wage basis. If petitioner had worked as supporting field staff and received fixed monthly salary from 2006 to 2012, then by no stretch of imagination, he would be falling in the definition of workman and at the same time, version of claimant/petitioner that he had worked regularly and competed 240 days cannot be relied. It would be also pertinent to mention here that the petitioner claimed to have worked on daily wage basis but vide Ex. P1 information furnished under RTI revealed that he had worked monthly on daily paid basis since year 2003. Thus, plea of petitioner to have been engaged by respondent as daily wage basis in 2000 gets falsified from document referred to above.

15. Ld. counsel for the respondent has taken through cross-examination of petitioner in which he has specifically admitted that while being employed as daily wage, he had not produced any record as he has claimed that the records was with the department. He has further admitted in cross-examination that his name was not sponsored by the employment exchange. He has shown ignorance if he had ever been engaged on muster roll but maintained that from very beginning he had been working with agro forestry and organic farming department. He has admitted in cross-examination that workmen whose name was entered in the muster roll invariably gets incorporated in the seniority list but no seniority list showing petitioner's name has been provided by his department. Significantly, he has admitted that correctness of seniority list prepared by the respondent/department as he has admitted in cross-examination that he did not raise any objection qua seniority list which had been circulated twice. Not only this, petitioner admitted that after 1998 university had not engaged any one as daily paid labourer, then how he was appointed or engaged in April, 2000 cannot be accepted as correct rather it falsified the claim of petitioner. It may be pertinent to state here that petitioner had put his signature on Ex. RA bill voucher vide which he had received payment besides he has also admitted on oath that on 10th March, 2008 in pursuance to office order, he was appointed as supporting staff on monthly salary of Rs.3500/- on the basis of application submitted by him. Similarly, vide Ex. RB, Ex. RC petitioner was appointed on fixed monthly salary however vide Ex. RD his contract of employment was terminated consequent upon termination of project in which petitioner worked and other important aspect which goes to root of the case as admitted by the claimant/petitioner on oath is that all workmen similarly situated were being engaged through contractor which goes to show that respondent/employer had stopped direct recruitment and workmen were being supplied by the contractor.

16. Shri Manoj Kumar, registrar HPKV Palampur has shown his ignorance about the number of employees who have been regularized as he could speak so on being shown record. He has also shown his ignorance qua number of employees who were working contractual fixed monthly salary. He has further revealed in cross-examination that project ICAR was with the Central Government and he has admitted that no retrenchment compensation to the claimant/petitioner was paid but clarified that it was not required under the law. He has maintained that petitioner worked as seasonal worker in the project. On the point of regularization of Kulwant Singh and Kartar Singh this witness has clarified the same by stating that they had been engaged as

daily waged workers and were regularized because they were working since 1994 and after 1998, no daily paid labourer were employed by the department. About Smt. Promila Devi RW1 has maintained that she was engaged as data entry operator on contractual basis on fixed amount as per Ex. P-2. RW1 in his cross-examination maintained that respondent had engaged Smt. Promila Devi was also casual worker and her regularization in pursuance to sanction from finance department.

17. In his affidavit RW2 Shri S.P. Sharma, Dean, CSK HPKV Palampur, District Kangra has stated that funding agencies was released budget under different heads such as salary head, non-recurring contingency and recurring contingency and labourers were engaged from time to time. Said Shri S.P. Sharma, RW2 also specifically stated that the appointment of claimant/petitioner was for a limited tenure. Even otherwise also, Ex. P4 statute of Choudhery Sarwan Kumar H.P. Krishi Vishvavidyalaya also defines '**employees**' under Rule 1.4 dealing with definition which reads as under:-

"Employees means whole time employees (including officers and teachers) other than part time employees, honorary employees or those paid from contingencies"

18. Ld. counsel for respondent has contended with vehemence that even definition of 'employees' is defined under Statutes of University excludes part time employees and those paid from contingencies. RW2 Shri S.P. Sharma has stated in his affidavit that research projects are sanctioned for specified period and funding agencies provide funds for existing those projects. He has further stated that workmen/labourers are engaged in short term projects sanctioned by different funding agencies from time to time for scientific research and university has no control to extend the projects when its objectives are achieved or project is closed. Be it noticed that these facts on oath have remained un-repudiated. RW2 has also stated that project in which petitioner was appointed was closed on 31.3.2012.

19. In **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.**, the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. Thus, there could not be relationship of deharidhar/workman of claimant/petitioner with respondent as salary and remuneration was paid and at the same time the name of claimant/petitioner did not appear in the muster roll as well as in the seniority list. As such, it could not be construed by any stretch of imagination that claimant/petitioner was beldar engaged on muster roll. Having not established to have worked as beldar on muster roll and respondent had succeeded in establishing that claimant/petitioner was appointed on fixed monthly salary, it would be unsafe to hold that respondent while terminating the services of petitioner had violated mandatory provisions of Section 25-F of the Industrial Disputes Act.

20. In so far as engagement of juniors to that of present claimant/petitioner is concerned, suffice would be state here that claimant/petitioner had not worked on muster roll basis and also not worked as beldar besides his name did not figure in the seniority list as observed forgoing paras. It cannot be stated that any person junior to petitioner had been retained in service and claimant/petitioner had been terminated. Thus, there is even no violation of the provisions of Section 25-G of the Industrial Disputes Act. At the same time, there can also be no violation of the provisions of Section 25-H of the Industrial Disputes Act as claimant/petitioner claimed that juniors have been engaged and he had not been offered for reemployment. At the cost of repetition, it may not be erroneous to state here that petitioner had not been appointed as beldar on muster roll whose name did not figure in the seniority list and therefore even if some new persons have been engaged, petitioner could not be stated to have been denied opportunity offer of employment within the meaning of Section 25-H of the Industrial Disputes Act.

21. Ld. Authorized Representative for the petitioner had relied upon the judgment of Hon'ble Apex Court reported in **2002 LLR 928** titled as **M/s. National Aluminum Co. Ltd. vs. Deepak Kumar Panda & Ors.** in which Hon'ble Apex Court observed that employee can legally enforce his right to continue in service particularly when junior to him were continuing to work. In the case in hand, it is not attracted as no juniors were proved to be working with the respondent. Authorized Representative for the claimant/petitioner further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** in which the Hon'ble Apex Court has held that non-preparation of seniority list or non-display of seniority list is breach of the provisions of Section 25-G of the Industrial Disputes Act. I have gone through the aforestated judgment which would not be attracted in the case as the non inclusion of the name of claimant/petitioner in the seniority list was due to he being on contractual appointment and was not required to be shown in the seniority list. Otherwise also, seniority list had been prepared twice by respondent which has been circulated from time to time but claimant/petitioner had never taken objection as he admitted in cross-examination and thus he is now estopped to challenge the correctness of seniority list.

22. Enough has emphasized by the ld. Authorized Representative of claimant/petitioner on judgment of Hon'ble Apex Court reported in **2003 LLR 817** titled as **M/s. Bharat Heavy Electrical Limited vs. State of Uttar Pradesh & Ors.** in which Hon'ble Apex Court has held that non production of records pertaining to payments made to the gardeners either by the company or the contractor will lead to drawing of adverse inference in establishing direct relationship of employer and employees between the principal employer and the workers alleged to be engaged by the contractor more so when photocopies for attendance and payments made have been produced by the gardeners. I have gone through this judgment but the case in hand, no record has been **produced except the one bill by the claimant/petitioner**. Be it noticed that respondent has fairly produced all relevant records concerning claimant/petitioner moreso when there has been no objection from side of petitioner that documents sought be produced have not been produced or withheld and as such judgment 2003 (supra) does not come to the rescue of the claimant/petitioner. For similar reason, judgment of Hon'ble Apex Court reported in **2015 LLR 785** titled as **Gauri Shanker vs. State of Rajasthan** relied upon by Ld. Authorized Representative is also not attracted in the facts and circumstances of the case. In view of the foregoing discussions keeping in view of definition of workman as defined under Section 2(s) read with Section 2(oo) (bb) and other documentary evidence on record, claimant/petitioner has failed to prove that he was daily wage worker engaged by respondent as no muster roll was prepared qua his engagement and at the same time his name also did not figure in seniority list and as such it is held that respondent had not violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Accordingly, issue no.1 is answered in negative and for similar reason issue no. 2 also answered in negative against the petitioner and in favour of respondent. In view of my findings foregoing paras, issue no.3 is answered in favour of respondent as it is not established that petitioner was daily paid worker of the respondent. Accordingly, issues no. 1 to 3 are decided in negative against the petitioner and in favour of respondent.

ISSUE NO.4

23. Ld. counsel for the respondent has raised the objection on the locus standi of the petitioner to sue but as the petitioner was employee of respondent whose services had been terminated, he could legitimately challenge the action of the respondent management had he succeeded in establishing that the action of respondent was illegal and unjustified. Thus, from facts on record, it cannot be stated that petitioner has no locus standi to sue respondent. Issue in hand is answered in negative in favour of petitioner and against the respondent.

ISSUE NO.5

24. In view of what has been held under the foregoing issues, nothing has been brought of this court, as to how this Court has no jurisdiction to entertain the claim of the petitioner. Issue in hand is thus decided in negative and accordingly held in favour of the petitioner and against the respondent.

ISSUE NO. 6

25. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. counsel representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.7

26. In view of the findings on the above issues petitioner has cause of action, moreso when he alleged termination of service by respondent illegally. Hence, this issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.8

27. It is not shown as to how the petitioner has not come to the Court with clean hands. No evidence has been led on this issue. Therefore, this issue is decided accordingly.

ISSUE NO.9

28. It is not shown by the respondent as to what facts have been withheld by the petitioner from the court. Neither any evidence has been led nor any submissions have been made in this behalf by the respondent. Hence, this issue is also decided against the respondent and in favour of the petitioner.

RELIEF

29. As a sequel to my findings on foregoing issues claim petition is dismissed, leaving the parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of November, 2015.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 108/2014
 Date of Institution : 26.02.2014
 Date of Decision : 17.11.2015

Shri Parkash Chand s/o Shri Sher Singh, r/o Village Nag Mandir, P.O. Bhangwar, Tehsil Dehra, District Kangra, H.P.Petitioner.

Versus

The Director of Research, Choudhery Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur, District Kangra, H.P.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Parkash Chand S/O Shri Sher Singh, R/O Village Nag Mandir, P.O. Bhangwar, Tehsil Dehra, District Kangra, H.P. w.e.f. 31.03.2012 vide order No. QSD/OA/CSKHPKV/206-56/257-85 dated 27.02.2012 by the Director of Research, Choudhery Sarwan Kumar, Himachal Pradesh Krishi Vishvavidyalaya, Palampur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been appointed by the respondent on daily wage basis w.e.f. June, 2006 who had been paid the daily rate as fixed by the State Govt. from time to time. It is alleged that petitioner had continuously worked without breaks with the Agro Forestry and Organic Agriculture department upto 9th March, 2008 but while appointing him no letter was issued and at the same time terms and conditions were not settled. Averments made in the claim petition further revealed that service condition of the petitioner had been changed by the respondent by engaging him as supporting staff in the same department on fixed salary w.e.f. 10th March, 2008 instead of daily rate which he was receiving earlier and thus the petitioner continued to work under the Incharge of Agro Forestry and Organic Agriculture department upto 31st March, 2012. It further remains the case of petitioner that petitioner had completed 240 days in each calendar year w.e.f. June, 2006 to 31.3.2012 working with the same employer and was in continuous services envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called ‘the Act’ for brevity). It also remains the case of petitioner that respondent had not issued any attendance card, casual card or wage slip during period aforesaid

besides maintained that the work and conduct of petitioner was found satisfactory who had been not given any chance for complaint to the management of respondent as well as to the Incharge or say head of department. The grievances of petitioner remains that the respondent had terminated service of petitioner along-with other similarly situated employees w.e.f. 31.3.2012 to 27.2.2012 vide letter no.QSD-DR-/4-13 (Tech) 2012/1951-53, dated 22nd March, 2012. It is alleged that even at the time of termination of the services, no retrenchment compensation envisaged under Section 25-F (b) of the Act was paid and thus termination without compliance of the above stated provision is null, void ab-initio. It is alleged that despite availability of works and funds with the department, services of the petitioner had been deliberately terminated without any misconduct on his part and thus the same was in violation of principle of natural justice. Averments made in the claim petition also revealed that several persons junior to claimant/petitioner namely Vinod Kumar, Rajeev Kumar, Suresh Kumar, Krishan Kumar, Ashwani Kumar, Ashok Kumar, Om Prakash, Vipan Kumar and Ravinder Kumar had been retained in service and while doing the same, respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It also remain the case of the petitioner that after his termination, respondent had appointed fresh hands in place of petitioner namely Anurag Parmar, Santosh Kumar, Bablu, Om Prakash, Rattan Chand, Vinod Kumar, Rajeev Kumar and in this manner, petitioner had not been given an opportunity for reemployment and thus respondent had violated the provisions of Section 25-H of the Act. It is also alleged that petitioner had joined union in the year 2009 and due to union activities, petitioner's services had been unlawfully terminated by the respondent and thus act of respondent in terminating of services of petitioner was unfair labour practice as stipulated in Schedule Vth Clause 4 (a) and (b) of the Act. Not only this, petitioner also alleges discrimination on the part of respondent as one Kulwant Singh s/o Shri Nek Ram, r/o VPO Jhareth, Tehsil Palampur, District Kangra and Kartar Chand s/o Shri Hari Singh r/o Village Oder, P.O. Sungal, Tehsil Palampur, District Kangra were working on the post of supporting staff vide letter no. AFE/CSKHPK/2003/KAR/206-21/1179-94 dated 19.6.2006 in the department of Agro Forestry and Environment and both these workmen have been regularized after completion of eight years of service. The grievances of petitioner also remains that one Kumari Promila Devi d/o Shali Ram who was appointed on contract basis on fixed salary too has been regularized as clerk in regular pay scale after completion of eight years of service of State Govt. vide letter no. 66984-97 dated 19.7.2010. Thus, claiming his termination, petitioner alleges arbitrariness and act of respondent as unconstitutional in violation of mandatory provisions of the Act which has been prayed to be set aside. Accordingly, petitioner claims that his termination vide order dated 27.2.2012 w.e.f. 31.3.2012 be set aside and quashed and respondent be directed to reinstate petitioner in service with seniority, continuity in service and full back wages alongwith consequential benefits including litigation costs quantified at Rs.10,000/- besides the petitioner has also prayed for regularization service after completion of eight years of service in the regular pay scale.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections qua maintainability, locus standi, cause of action, jurisdiction, petitioner not falling within the definition of workman (diharidar) as he had never been engaged on muster roll basis in the records of the respondent university. It is specifically stipulated that the duties performed by petitioner were on contract basis for which bill of the work was raised and the same was paid at the rate not below the govt. rate. The petitioner is alleged to have been engaged for a particular period and **his employment was co-terminus with the project** and that petitioner while filing the claim petition has not approached the court with clean hands. On merits, respondent has asserted that according to policy of government of H.P. notified by Department of Finance order no. FIN.1-C(14)-1/83 dated 8.7.1998 adopted by university vide notification no. 1-2002/HPKV/97-78833-946 dated 13.11.1998 the policy/system to engage DPL i.e. daily paid labourer was banned. Thus, petitioner had never been engaged on daily paid labourer on muster roll basis in the year 2006 as has been claimed by him. It is also alleged that petitioner was engaged on contract basis in the year 2006 who used to raise bill of work performed and his wages were paid from the funds of project

funded by ICAR/GOI and that no payment were paid from the grant-in-aid of the respondent university. It is alleged that the petitioner had been engaged on daily paid labourer on muster roll basis his name would have figured in the seniority list of university circulated in 2006 and later in the year 2008. It is further alleged that an ad-hoc project on Organic Farming in hill agriculture under the plan scheme (strengthening and development of agriculture education) Niche Area of Excellence was sanctioned to the respondent university by the Government of India in which some position of supporting staff (field workers) were provided on fixed project fellowship of Rs.2,500/- per month and these position for which the petitioner had applied and was selected and offered post of supporting staff vide letter no. AFE/CSKHPKV/2006-21/480-503 dated 10.3.2008 on terms and conditions contained therein. Thereafter, again advertised the position of supporting staff/field helper on project fellowship of Rs.3500/- fixed per month for which petitioner had applied and selected and was offered post of field helper job. Thereafter, petitioner had applied offered appointment on monthly salary of Rs. 2500/- in the same department and petitioner/claimant was notified termination of adhoc research project in which petitioner was last engaged the services of petitioner had been terminated on 31st March, 2012 afternoon after serving him notice dated 27.2.2012. It is alleged that petitioner served one month advance notice of termination of service before termination by the head of project in which he had been terminated. In so far as allegation of regularization of Kulwant Singh and Kartar Chand are concerneds, respondent in his reply specifically alleged that their services had been regularized according to policy of State Govt. and both these official had worked since 1994. At the same time, Smt. Promila Devi d/o Sh. Shali Ram had been stated to be appointed data entry operator on contractual basis and her services had been regularized on the basis of policy framed by the govt. of H.P. vide letter no. PER (AP)-C-F(1)-1/2010 dated 7.5.2010 and as such case of petitioner had no direct nexus with Smt. Promila Devi. Thus, while denying cause of action as stated respondent has maintained that engagement of petitioner was co-terminus with the specific project in which he was appointed as supporting field staff on fixed monthly salary till completion of project and thus no provisions of the Industrial Disputes Act was stated to have been infringed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Manoj Kumar, the then Registrar, CSKHPKV, Palampur as RW1, RW2 Shri S.P. Sharma the Dean CSK HPKV Palampur tendered/proved his affidavit Ex. RW1/A and another affidavit Ex. RW2/A, letter dated 4.10.2007 Ex. RW1/B, Ex. RW1/C copy of letter dated 25.5.2009, Ex. RW1/D notification dated 13.11.1998, Ex. RW1/E copy of letter dated 8.7.1998, office order dated 17.2.1999 Ex. RW1/F, Ex. RW1/G copy of office order dated 19.7.2010, Ex. RW1/H letter dated 10.3.2008, Ex. RW1/I, office order dated 2.11.2010, Ex. RW1/J office order dated 15.12.2011, Ex. RW2/B copy of Award dated 30.6.2014 and closed the evidence.

7. I have heard the ld. counsel representing for the parties, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed by my ld. Predecessor on 27.02.2015 for determination:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 31.03.2012 is/was improper and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...OPP.

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3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ...OPR.
4. Whether the petitioner has no locus standi to file the case as alleged? ...OPR.
5. Whether this court has no jurisdiction to file the present case as alleged? ...OPR.
6. Whether the claim petition is not maintainable in the present form? ...OPR.
7. Whether the petitioner has no cause of action to file the present case as alleged? ...OPR.
8. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? ...OPR.
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? ...OPR.
10. Relief.
9. For the reasons detailed here under, my findings on the above issues are as follows:-
- Issue No.1 : No
- Issue No.2 : No
- Issue No.3 : Yes
- Issue No.4 : Yes
- Issue No.5 : No
- Issue No.6 : No
- Issue No.7 : No
- Issue No.8 : No
- Issue No.9 : No
- Relief. : Claim petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.
11. At the outset, it is apt to mention here that claimant/petitioner claims to have worked from year 2006 to 09.03.2008 as beldar (deharidara) as daily wage and thereafter from 10.3.2008 to 31.3.2012 in various projects of the respondent. Thus, claiming to have rendered more than 6 years

of continuous service completing 240 days in each calendar year, the petitioner has alleged that he was illegally and unlawfully retrenched by the respondent. Before proceeding further, it would be apt to mention here that information under RTI Act Ex. P1was supplied which showed that petitioner had worked from 2006 to 2008 **on work contract basis** and later he worked for 128 days and 29 days on **fixed monthly salary basis co-terminus with the project**. It is admitted case of the parties that daily paid labourer had not been engaged by the respondent department after notification dated 21.4.1999 issued by Controller of HPKV Palampur. It is equally admitted case of the parties that name of the claimant/petitioner did not figure in the seniority list of daily wage workers although respondent had circulated tentative seniority list in the year 2006 which is Ex. RW1/B and thereafter final seniority list of daily wager worker/helpers as on 31.3.2008 Ex. RW1/C is final seniority list as on 31.3.2008 in which the name of petitioner did not figure. It is equally admitted case of the petitioner that he had not raised any protest or objection qua not inclusion his name either of the list as aforesaid till date.

12. Ld. counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union**, in which Hon'ble Apex Court has held that non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act. I have gone through this judgment which is not applicable to present case as respondent had displayed as well as prepared seniority list per evidence on record and it is not material to consider at this stage reasons for non inclusion of the name of claimant/petitioner.

13. Ld. counsel for the petitioner has further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 95** titled as **Sudarshan Rajpoot vs. U.P. State Road Transport Corporation** in which Hon'ble Apex Court has dealt with aspect of termination of contractual appointment. In this case, it was held that respondent had failed to prove that the appellant was appointed on contractual basis by producing any cogent evidence. It was further held that even otherwise the appellant had worked for more than three years and 240 days in a year and his removal from service amounted to unfair labour practice. The case in hand clearly distinguishable from the case of Hon'ble Apex Court having different facts altogether before this court as petitioner is established to have worked initially on work contract basis and thereafter on fixed monthly salary. Needless to mention here that after the year 2006, the petitioner had applied time and again for seeking job of supporting field staff on fixed monthly salary and therefore he will be continued to be contractual employee and thus the judgment of **Sudarshan Rajpoot (2015) supra** would not be attracted in this case.

14. The crux of the problem which has cropped up for adjudication before by this court is to determine relationship between claimant/petitioner and the respondent. If petitioner is found to have worked on contractual basis as has been argued by ld. counsel for respondent, petitioner would not fall under the definition of the workman in view of specific provision envisaged under Section 2(oo) dealing with retrenchment as definition of workman is to be read with retrenchment of workman under Section 2(oo) of the Industrial Disputes Act. Section 2 (bb) provides the termination of services of workman with result of nonrenewal of contract of employment would not constitute retrenchment. In the case in hand, there is no reliable evidence on record establishing that the name of claimant/petitioner existed in muster roll and when he was engaged as field staff vide appointment offer vide Ex. RB dated 10.3.2008 subsequent offer of appointment as field staff dated 16.4.2010 Ex. RC and lastly vide Ex. RD it is established on record that petitioner had worked on contractual basis while accepting the offer of appointment by the respondent and in preceding 12 months he had not been engaged as daily wage basis. If petitioner had worked as supporting field staff and received fixed monthly salary from 2006 to 2012, then by no stretch of imagination, he would be falling in the definition of workman and at the same time, version of claimant/petitioner that he had worked regularly and completed 240 days cannot be relied. It would be also pertinent to

mention here that the petitioner claimed to have worked on daily wage basis but vide Ex. P1 information furnished under RTI revealed that he had worked monthly on daily paid basis since year 2007. Thus, plea of petitioner to have been engaged by respondent as daily wage basis in 2006 gets falsified from document referred to above.

15. Ld. counsel for the respondent has taken through cross-examination of petitioner in which he has specifically admitted that while being employed as daily wage, he had not produced any record as he has claimed that the records was with the department. He has further admitted in cross-examination that his name was not sponsored by the employment exchange. He has shown ignorance if he had ever been engaged on muster roll but maintained that from very beginning he had been working with agro forestry and organic farming department. He has admitted in cross-examination that workmen whose name was entered in the muster roll invariably gets incorporated in the seniority list but no seniority list showing petitioner's name has been provided by his department. Significantly, he has admitted that correctness of seniority list prepared by the respondent/department as he has admitted in cross-examination that he did not raise any objection qua seniority list which had been circulated twice. Not only this, petitioner admitted that after 1998 university had not engaged any one as daily paid labourer, then how he was appointed or engaged in April, 2000 cannot be accepted as correct rather it falsified the claim of petitioner. It may pertinent to state here that petitioner had put his signature on Ex. RA bill voucher vide which he had received payment besides he has also admitted on oath that on 10th March, 2008 in pursuance to office order, he was appointed as supporting staff on monthly salary of Rs.3500/- on the basis of application submitted by him. Similarly, vide Ex. RB, Ex. RC petitioner was appointed on fixed monthly salary however vide Ex. RD his contract of employment was terminated consequent upon termination of project in which petitioner worked and other important aspect which goes to root of the case as admitted by the claimant/petitioner on oath is that all workmen similarly situated were being engaged through contractor which goes to show that respondent/employer had stopped direct recruitment and workmen were being supplied by the contractor.

16. Shri Manoj Kumar, registrar HPKV Palampur has shown his ignorance about the number of employees who have been regularized as he could speak so on being shown record. He has also shown his ignorance qua number of employees who were working contractual fixed monthly salary. He has further revealed in cross-examination that project ICAR was with the Central Government and he has admitted that no retrenchment compensation to the claimant/petitioner was paid but clarified that it was not required under the law. He has maintained that petitioner worked as seasonal worker in the project. On the point of regularization of Kulwant Singh and Kartar Singh this witness has clarified the same by stating that they had been engaged as daily waged workers and were regularized because they were working since 1994 and after 1998, no daily paid labourer were employed by the department. About Smt. Promila Devi RW1 has maintained that she was engaged as data entry operator on contractual basis on fixed amount as per Ex. P-2. RW1 in his cross-examination maintained that respondent had engaged Smt. Promila Devi was also casual worker and her regularization in pursuance to sanction from finance department.

17. In his affidavit RW2 Shri S.P. Sharma, Dean, CSK HPKV Palampur, District Kangra has stated that funding agencies was released budget under different heads such as salary head, non-recurring contingency and recurring contingency and labourers were engaged from time to time. Said Shri S.P. Sharma, RW2 also specifically stated that the appointment of claimant/petitioner was for a limited tenure. Even otherwise also, Ex. P4 statute of Choudhery Sarwan Kumar H.P. Krishi Vishvavidyalaya also defines '**employees**' under Rule 1.4 dealing with definition which reads as under:-

"Employees means whole time employees (including officers and teachers) other than part time employees, honorary employees or those paid from contingencies"

18. Ld. counsel for respondent has contended with vehemence that even definition of 'employees' is defined under Statutes of University excludes part time employees and those paid from contingencies. RW2 Shri S.P. Sharma has stated in his affidavit that research projects are sanctioned for specified period and funding agencies provide funds for existing those projects. He has further stated that workmen/labourers are engaged in short term projects sanctioned by different funding agencies from time to time for scientific research and university has no control to extend the projects when its objectives are achieved or project is closed. Be it noticed that these facts on oath have remained un-repudiated. RW2 has also stated that project in which petitioner was appointed was closed on 31.3.2012.

19. In **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.**, the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. Thus, there could not be relationship of deharidara/workman of claimant/petitioner with respondent as salary and remuneration was paid and at the same time the name of claimant/petitioner did not appear in the muster roll as well as in the seniority list. As such, it could not be construed by any stretch of imagination that claimant/petitioner was beldar engaged on muster roll. Having not established to have worked as beldar on muster roll and respondent had succeeded in establishing that claimant/petitioner was appointed on fixed monthly salary, it would be unsafe to hold that respondent while terminating the services of petitioner had violated mandatory provisions of Section 25-F of the Industrial Disputes Act.

20. In so far as engagement of juniors to that of present claimant/petitioner is concerned, suffice would be state here that claimant/petitioner had not worked on muster roll basis and also not worked as beldar besides his name did not figure in the seniority list as observed forgoing paras. It cannot be stated that any person junior to petitioner had been retained in service and claimant/petitioner had been terminated. Thus, there is even no violation of the provisions of Section 25-G of the Industrial Disputes Act. At the same time, there can also be no violation of the provisions of Section 25-H of the Industrial Disputes Act as claimant/petitioner claimed that juniors have been engaged and he had not been offered for reemployment. At the cost of repetition, it may not be erroneous to state here that petitioner had not been appointed as beldar on muster roll whose name did not figure in the seniority list and therefore even if some new persons have been engaged, petitioner could not be stated to have been denied opportunity offer of employment within the meaning of Section 25-H of the Industrial Disputes Act.

21. Ld. Authorized Representative for the petitioner had relied upon the judgment of Hon'ble Apex Court reported in **2002 LLR 928** titled as **M/s. National Aluminum Co. Ltd. vs. Deepak Kumar Panda & Ors.** in which Hon'ble Apex Court observed that employee can legally enforce his right to continue in service particularly when junior to him were continuing to work. In the case in hand, it is not attracted as no juniors were proved to be working with the respondent. Authorized Representative for the claimant/petitioner further relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** in which the Hon'ble Apex Court has held that non-preparation of seniority list or non-display of seniority list is breach of the provisions of Section 25-G of the Industrial Disputes Act. I have gone through the aforeslated judgment which would not be attracted in the case as the non inclusion of the name of claimant/petitioner in the seniority list was due to he being on contractual appointment and was not required to be shown in the seniority list. Otherwise also, seniority list had been prepared twice by respondent which has been circulated from time to time but claimant/petitioner had never taken objection as he admitted in cross-examination and thus he is now estopped to challenge the correctness of seniority list.

22. Enough has emphasized by the ld. Authorized Representative of claimant/petitioner on judgment of Hon'ble Apex Court reported in **2003 LLR 817** titled as **M/s. Bharat Heavy Electrical Limited vs. State of Uttar Pradesh & Ors.** in which Hon'ble Apex Court has held that non production of records pertaining to payments made to the gardeners either by the company or the contractor will lead to drawing of adverse inference in establishing direct relationship of employer and employees between the principal employer and the workers alleged to be engaged by the contractor more so when photocopies for attendance and payments made have been produced by the gardeners. I have gone through this judgment but the case in hand no record has been **produced except the one bill by the claimant/petitioner**. Be it noticed that respondent has fairly produced all relevant records concerning claimant/petitioner moreso when there has been no objection from side of petitioner that documents sought be produced have not been produced or withheld and as such judgment 2003 (supra) does not come to the rescue of the claimant/petitioner. For similar reason, judgment of Hon'ble Apex Court reported in **2015 LLR 785** titled as **Gauri Shanker vs. State of Rajasthan** relied upon by Ld. Authorized Representative is also not attracted in the facts and circumstances of the case. In view of the foregoing discussions keeping in view of definition of workman as defined under Section 2(s) read with Section 2(oo) (bb) and other documentary evidence on record, claimant/petitioner has failed to prove that he was daily wage worker engaged by respondent as no muster roll prepared qua engagement and at the same time his name also did not figure in seniority list and as such it is further held that respondent had not violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Accordingly, issue no.1 is answered in negative and for similar reason issue no. 2 also answered in negative against the petitioner and in favour of respondent. In view of my findings foregoing paras, issue no.3 is answered in favour of respondent as it is not established that petitioner was daily paid worker of the respondent. Accordingly, issues no. 1 to 3 are decided negative against the petitioner and in favour of respondent.

ISSUE NO.4

23. Ld. counsel for the respondent has raised the objection on the locus standi of the petitioner to sue but as the petitioner was employee of respondent whose services had been terminated, he could legitimately challenge the action of the respondent management had he succeeded in establishing that the action of respondent was illegal and unjustified. Thus, from facts on record, it cannot be stated that petitioner has no locus standi to sue respondent. Issue in hand is answered in negative in favour of petitioner and against the respondent.

ISSUE NO.5

24. In view of what has been held under the foregoing issues, nothing has been brought of this court, as to how this Court has no jurisdiction to entertain the claim of the petitioner. Issue in hand is thus decided in negative and accordingly held in favour of the petitioner and against the respondent.

ISSUE NO.6

25. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. counsel representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.7

26. In view of the findings on the above issues petitioner has cause of action, moreso when he alleged termination of service by respondent illegally. Hence, this issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.8

27. It is not shown as to how the petitioner has not come to the Court with clean hands. No evidence has been led on this issue. Therefore, this issue is decided accordingly.

ISSUE NO.9

28. It is not shown by the respondent as to what facts have been withheld by the petitioner from the court. Neither any evidence has been led nor any submissions have been made in this behalf by the respondent. Hence, this issue is also decided against the respondent and in favour of the petitioner.

RELIEF

29. As a sequel to my findings on foregoing issues claim petition is dismissed, leaving the parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of November, 2015.

Sd/-
(K.K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 168/2013
Date of Institution : 20.9.2013
Date of decision : 30.11.2015

Smt. Guddi Devi w/o Shri Nand Lal, r/o Village Drob, P.O. Balh Kwar, Tehsil Joginder Nagar, District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Guddi Devi, W/O Shri Nand Lal, R/O Village Drob, P.O. Balh Kwar, Tehsil Joginder Nagar, District Mandi, H.P. during 2006 to 31.8.2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed her statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 01.08.2005 in its National Highway Division, Joginder Nagar and later she (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but she was given fictional breaks from time to time from her initial engagement till 31.8.2007. It is alleged that she was issued muster rolls for 15 days in a month, though the work was available for the entire month but, her juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving her the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from August, 2005 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-II were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of ‘last come first go’ and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed by my ld. Predecessor on 20.2.2014 for determination:

1. Whether time to time termination of the services/giving fictional breaks in service to the petitioner by the respondent from the year 2006 to 31.8.2007 is/was illegal and unjustified as alleged? ...OPP.
2. Whether the claim petition is not maintainable in the present form? ...OPR.
3. Whether the petition is hit by vice of delay and laches as alleged. If so, its effect? ...OPR.
4. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : No

Issue No.2 : No

Issue No.3 : No

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. August, 2005 is not in dispute. It is the admitted case of petitioner that she had worked since August, 2005 but she had been deliberately given fictional breaks by respondent so that she could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own use to not come on her duty besides she willfully absented several times from it.

11. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from her duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties as absence from duty is serious

misconduct. It is projected to be case as if petitioner came of her own and worked at her whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to her and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

12. The perusal of mandays chart Ex. RW1/C would reveal that in the year 2005 petitioner had worked for 72 days, 170 days in 2006, 228 days in 2007, 364 days in 2008, 361 days in 2009, 361 days in 2010, 365 days in 2011 and 357 days in 2012. It can be noticed that in the several years petitioner has worked for less than 240 days whereas for other remaining years, she had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1997, 1999, 2000, 2002, 2003 and 2004 respectively who had joined earlier to petitioner whereas petitioner had joined in August, 2005. Ld. Dy. D.A. for the respondent has repudiating the claim of petitioner on the point that the workmen mentioned in the seniority list Ex. RW1/D were senior to the petitioner and no junior workmen to the petitioner had been retained in service as claimed by the petitioner.

13. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged in August, 2005 and thereafter engaged and disengaged between 2005 to 2007 by giving fictional break and that she has been regularly provided with more than 240 days of work after 2007. There is no iota of evidence that petitioner had factually worked for 240 days in a year prior to 2007. Similarly, there is nothing authenticated in evidence establishing that persons junior were actually engaged at the time of giving fictional breaks to petitioner. As such, when it is not established that persons junior to petitioner were retained as shown in seniority list Ex. RW1/D in service and that petitioner was given fictional breaks provisions of Sections 25-G and 25-H of Industrial Disputes Act cannot be stated to have been not adhered by respondent and thus it would be unsafe to hold that petitioner had established allegation of time to time termination by the respondent/department is held to have not been proved which cannot be stated to illegal or unjustified rather it is to be inferred that attendance of petitioner was marked only for those days she worked with respondent. As such, on this count also plea of time to time termination, the petitioner has not established her claim. Accordingly, it is held that petitioner has failed to establish by reliable evidence that she had been given fictional breaks which were illegal and unjustified. Accordingly, issue no.1 is answered in negative against the petitioner and in favour of respondent.

ISSUE NO.2

14. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.3

15. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2005 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she come to know about intermittent breaks in her service records. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner has made reference to this

court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

16. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

17. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of November, 2015.

SD-
(K. K. SHARMA)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 266/2014
Date of Institution : 27.08.2014
Date of Decision : 30.11.2015

Shri Vishal Kumar s/o Shri Kamal Kumar, r/o Village Mohalla Ovari, Chamba Town, Distt. Chamba, H.P.Petitioner.

Versus

The Regional Manager, Himachal Road Transport Corporation Chamba, District Chamba, H.P.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. D.P. Malhotra, Adv.

For the Respondent : Sh. Navneet Puri, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Vishal Kumar S/O Sh. Kamal Kumar, Mohalla Ovari, Chamba Town, Distt. Chamba, H.P. who was working as part time sweeper by the V/s The Regional Manager, Himachal Road Transport Corporation Chamba, Distt. Chamba, H.P. during January, 2009 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/management(s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stated in the claim petition reveal that claimant/petitioner was appointed/engaged as sweeper w.e.f. April, 2002 at HRTC workshop Chamba on daily wages basis who continued to work till 16th January, 2009 when his services were terminated orally without assigning any reason. The grievance of the petitioner also remains that RM, HRTC, Chamba despite verbal request did not reengage the petitioner on work despite availability of works and funds. Not only this, some workers juniors to the petitioner were still working on daily wages basis

with the respondent/department and thus the respondent had violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. It can also be gathered from proceedings on record that petitioner claims to have worked for more than 240 days continuously on the post of beldar in preceding 12 calendar months from the date of his illegal termination who had been disengaged on 16th January, 2009 and thus was entitled to reinstatement on the same post of sweeper as at the time of his termination with continuity of service, back wages and consequential benefits. The petitioner further claims that since petitioner had rendered service of more than seven years continuously with 240 days in each calendar year on the respective post of sweeper, he is liable to be regularized in service.

4. The respondent contested claim petition, filed reply specifically denied that petitioner was employed/appointed by respondent as sweeper w.e.f. April, 2002 at HRTC workshop on daily wages and thereafter he continuously worked till January, 2009 as claimed. In unambiguous terms respondent maintained that petitioner was neither employed nor was engaged as part-time sweeper at HRTC workshop rather petitioner was stated to be freelance sweeper/worker who worked only on alternate days to clean the workshop of the HRTC and his services were taken off and on by the department as and when required. Denying the allegation to have violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, respondent had maintained that petitioner had never been appointed as regular employee nor engage by the respondent on contract basis or even on daily wage basis who was paid for only specific work which he was used to undertake/perform in HRTC workshop on alternate days as and when required by the respondent. It is also alleged that neither any interview was ever conducted nor appointment letter was ever issued to petitioner as per the office record available for the employees on roll of the department. As such, question of oral as well as written notice to terminate the services of petitioner on 16.1.2009 did not arise however it was emphatically denied that petitioner had ever completed 240 days in preceding 12 calendar months with the department in any of the years he claimed to have worked.

5. The petitioner has filed rejoinder to the reply filed by respondent, reiterated his stand as maintained in claim petition claiming to be working with the respondent from April, 2002 till January, 2009. It is denied that petitioner had merely worked for two hours on alternative days for four months.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved Ex. PW1/A copy of demand notice and closed the evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Anoop Kumar, Deputy Divisional Manager, HRTC Chamba tendered/proved his affidavit Ex. RW1/A, Ext. RW1/B1 to Ext. RW1/B6 the copies of various bills qua payment made to the petitioner during the period from 2006 to 2009 and closed evidence.

7. I have heard the counsel representing petitioner and ld. counsel for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 12.08.2015 for determination:

1. Whether termination of services of the petitioner by the respondent during the year January, 2009 is/was improper and unjustified as alleged? ...OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Relief. : Claim petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 AND 2

10. Before advertiring to rival contentions of the parties, it would be relevant to consider the documentary evidence led by the parties in support of their respective pleas. Ex. RW1/B1 is a receipt of Rs.1000/- qua payment by respondent made to the petitioner for having worked for two hours from 1st September, 2006 to 30th September, 2006. Ex. RW1/B2 pertains to payment of wages from 1st October, 2006 to 31st October, 2006. Ex. RW1/B3 is the receipt showing payment of wages from 1.11.2006 to 30.11.2006. Ex. RW1/B4 payment of receipt from 1.12.2006 to 31.12.2006. Be it noticed that all these four receipts are dated 15th January, 2007 vide which payment of Rs.1000/- each for the relevant month were made and acknowledged by petitioner. Similarly, Ex. RW1/B5 and Ex. RW1/B6 are the receipts reflecting payment of Rs.1000/- each of the year for having worked for two hours from 1st December, 2008 to 31st December, 2008 and 1st November, 2008 to 30th November, 2008. Except aforestated documentary evidence, there is no other record establishing in any kind of payment made to the petitioner by respondent. Ex. PW1/A is the demand notice which is undated issued by petitioner to the respondent raising industrial dispute qua disengagement of the services of petitioner orally without notice under Section 25-F of the Industrial Disputes Act. The case of petitioner also remains that the demand notice which is undated stood un-replied and therefore the claim petition was liable to be allowed in view of allegations contained in the demand notice coupled with allegations proved by the petitioner on record on oath but factually serving of demand notice or its despatch properly notifying claim of petitioner to respondent is not established by any corresponding reliable evidence.

11. The petitioner has stepped into the witness box as PW1 deposed on oath that he had been engaged by the respondent on daily wages basis whose services had been terminated for which a demand notice Ex. PW1/A without any date was issued demanding reinstatement along-with seniority. In his statement in examination-in-chief, petitioner has nowhere whispered even a single word that he had rendered services to the respondent for 240 days in a year so as to attract applicability of the provisions of Section 25-F of the Industrial Disputes Act. At the same time, there is no iota of evidence showing if any junior to petitioner was retained and the petitioner was disengaged as maintained in claim petition and such plea was not even deposed on oath in examination-in-chief rather case of the respondent that petitioner was a freelance sweeper engaged off and on, on payment of wages but did not have any relationship of workman with respondent as employer gets eclipsed from oral and documentary evidence led by respondent. Cross-examination of the petitioner revealed that he failed to tell even the person who had engaged him or designation in the department of respondent. He has further admitted that HRTC had not given any appointment letter to him significantly he had admitted on oath that his attendance was also not marked anywhere in the attendance register of respondent. Not only this, petitioner also admits that he had not produced any salary slip when he filed his claim petition despite possessing the same with him

without any plausible reason. Thus, merely because petitioner has worked for two hours in four months in the year 2006 and for the same period in two months in 2008 would not establish relationship of claimant/petitioner and the respondent as workman and employer under Industrial Disputes Act rather under the grab payment having received certain payments by him, petitioner is making futile attempt to establish his claim qua being par-time employee of the respondent which is not proved from evidence on record.

12. Cross-examination of RW1 Shri Anoop Rana revealed that petitioner was paid for whatever work he performed. He has clarified that petitioner had worked for two hours for which he was being paid Rs.1000/- but failed to tell total number of hours for which the petitioner worked. In the case in hand, there is no iota of evidence on record qua attendance of the petitioner in any of the records of the respondent and at the same time petitioner has failed to bring on record any muster roll issued by the respondent besides omitted to produce any seniority list by which it could be established that person junior to him had been retained whereas being senior in service was disengaged. Thus, from the testimony of RW1 Shri Anoop Rana, it is established that petitioner was not engaged as sweeper on contract and even if the petitioner is held to have worked for two hours for about six months in the year 2006 and 2008 respectively as stated above, this would not culminate into any rights in his favour and his plea that he had worked from April, 2002 for 240 days in a year preceding his termination as is not substantiated from any corresponding documentary evidence on record. The petitioner had best evidence to produce salary slip but he had not produced as stated for reason best known to him. Similarly, petitioner has admitted that he was not marking his attendance falsified his claim qua his relationship between respondent. Even no coworker or employee of HRTC was remained to prove claim of petitioner. As such, the petitioner has failed to prove his claim to be workman with the respondent under the Industrial Dispute Act due to which relief sought for cannot be granted. Ld. counsel for the respondent has vehemently contended that from entire documentary evidence available on record the only inference which may be drawn is that petitioner was engaged off and on by respondent for work on payment but he did not work regularly even as part time worker as pleadings of the respondent are specific qua petitioner being engaged on alternate basis for which payments had been made vide receipts referred to above in foregoing paragraphs.

13. Having failed to prove cause of action as set up qua the claim petition respondent is held to have not violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act and for the said reason issues no.1 and 2 are answered in negative in favour of respondent and against the petitioner.

ISSUE NO.3

14. Ld. counsel for the respondent has contended with vehemence that since petitioner is neither a part time worker nor on the daily wage basis, he had no rights whatsoever for raising industrial dispute as despite payment of wages for specific period as revealed from respondent in the evidence, petitioner did not have any secured right to agitate the matter before Labour Court. Thus, when petitioner is held to be neither employee i.e. part time or full time, the petition is under Section 10 of the Industrial Disputes Act is held to be not maintainable. Issue no.3 is answered in affirmative against the petitioner and in favour of respondent.

RELIEF

15. As a sequel to my findings on the issues no. 1 to 3, claim petition fails and it is, therefore, dismissed, leaving the parties to bear their own costs in the peculiar circumstances of the case.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of November, 2015.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 01/2015
Date of Institution : 13.1.2015
Date of decision : 30.11.2015

Shri Paras Ram s/o Shri Bhikham Ram, r/o Village Bhullu, P.O. Jhullada, Tehsil & District Chamba, H.P.Petitioner.

Versus

The Divisional Forest Officer, Forest Division Chamba, District Chamba, H.P.Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryla, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Sh. Paras Ram S/O Sh. Bhikham Ram, Village-Bhullu, P.O. Jhullada, Tehsil & Distt. Chamba, H.P. by The Divisional Forest Officer, Forest Division Chamba, Distt. Chamba, during year, 2004, 2008 & 2009 without serving notice, without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved worker is entitled to?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent on muster roll as daily waged forest worker w.e.f. August, 2000

without any written appointment order/letter who continued to work uninterruptedly under the Masroond Range upto 2009. The grievance of petitioner remains that the respondent had given fictional breaks by way of terminating the services of petitioner orally from time to time during the entire service of petitioner. It is alleged that fictional breaks had been given to petitioner by respondent with the object that petitioner did not complete 240 days in each calendar year and deprived the petitioner from regularization. The grievance of further reveal that petitioner had made various requests in person as well as in writing to the authorities concerned to reengage him on muster roll but of no avail and thereafter petitioner had served demand notice dated 14.4.2013 and copy of the same had been forwarded to the Labour-cum-Conciliation Officer, Chamba to intervene the matter and amicably settlement through conciliation. Thereafter, respondent/department had reengaged the services of petitioner w.e.f. 3rd October, 2013. It is alleged that department/respondent had not regularized the services of petitioner due to giving fictional breaks for the purpose of seniority and continuity which was obligatory on the part of the respondent as per Section 25-B (1) of the Industrial Disputes Act. The grievance of petitioner remains that the respondent/department had not followed the provisions of Section 25-G of the Industrial Disputes Act as the persons junior to him had been retained in service. The name of juniors are Gudial who joined in 1.8.2004, Bajar Singh who also joined on 01.8.2004, Karam Chand, Beeru, Gurdei, Musarbu Devi, Moti Chand, Surinder Kumar, Bias Dev and Karam Singh who joined in the years 2004, 2005, 2008 and 2011 respectively have been retained in service by the respondent. It is alleged that the aforestated juniors are still working with the respondent/department and their services had been continued by the respondent and petitioner has not given any opportunity for reemployment. It is further alleged that the respondent/department had also violated the provisions of Section 25-H of the Act as new/fresh hands have been engaged by the respondent/department. It is alleged that respondent had while giving the fictional breaks to the petitioner just to favour the junior workmen who were favorite to the respondent. It is alleged that the petitioner had completed eight years continuous service. It is further alleged that petitioner has spotless services with the respondent/department and never been charge-sheeted for any act of indiscipline, negligence of work or misconduct and petitioner had performed his duties with full devotion. Accordingly, petitioner seeks relief to the extent that fictional breaks illegally given to him be treated and counted as period of continuity in service for the purposes of his regularization along with all consequential service benefits as per CWP no. 2735/2008 titled as Rakesh Kumar vs. State of HP & Ors. and to any other relief to which petitioner is found entitled.

4. Respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits, admitted that petitioner was initially engaged in forest department in September, 2001 in nursery of Masroond Forest Range intermittently to carry out the seasonal forestry works. It is stated that the services of petitioner were not terminated by the respondent but petitioner left the work of his own sweet will in the year 2009. It is further stated that petitioner was engaged as daily waged beldar for seasonal forestry work but petitioner had not come to the work and he could not completed 240 days in each calendar year. It is stated that petitioner is still working with the respondent/department and no fictional breaks had been given to him. It is denied that petitioner had made representations/request with the respondent for his reengagement. It is further stated that petitioner was never disengaged by the respondent but petitioner made himself available on the work of his own accord and sweet will. It is alleged that petitioner after 2008 petitioner had worked intermittently with the respondent/department and as such there was no violation of the Industrial Disputes Act. It is claimed that petitioner is still continuing to work intermittently with the department as per availability of work and funds. Asserted that the forest work was seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and works. It is alleged that respondent had not violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act. It is emphatically denied that any fictional break was given to petitioner with the object that he could not gets the benefit of the provisions of Section 25-B of the Act. Similarly, violation of principle of 'Last come First go'

has been alleged as against respondent when filed reply in which maintained that no persons junior to petitioner has been engaged continuously. It is further alleged that CWP No.2735/2008 titled as Rakesh Kumar vs. State of HP and Ors. is not applicable in the present case. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works the same did not constitute unfair labour practice rather petitioner engaged himself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B is the mandays chart, Ex. PW1/C1 to Ex. PW1/C5 are the mandays charts of juniors, Ex. PW1/D copy of seniority list, Ex. PW1/E1 to Ex. PW1/E4 are the copies of applications dated 13.7.2013, 1.2.2010, 5.7.2010 & 28.2.2011, Ex. PW1/F letter dated 7.10.2013 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rakesh Kumar, Divisional Forest Officer, Chamba as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 7.7.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years 2004, 2008 & 2009 is/was improper and unjustified as alleged?OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to?OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into the witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which he was engaged in August, 2000 and continued to work uninterruptedly in Masroond Forest Range upto 2009. He has specifically deposed on oath that from the year 2000 to 2009, his services had been engaged and disengaged by the respondent/department for giving fictional breaks to petitioner besides maintained the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks from 2000 till 2009, petitioner could not complete 240 days. Be it noticed that petitioner has also maintained on oath that his co-workers namely Bir Chand, Surinder Kumar, Karam Chand, Moti Ram and Smt. Musurbu Devi who were engaged in the years 2005, 2008, 2010 and 2011 respectively were in service. The petitioner has also deposed about the process of conciliation before the Labour Officer which failed consequent upon which reference was made by the appropriate government before this court for adjudication.

12. Ex. RW1/B is the mandays chart of petitioner reflecting that he had been appointed in the month of September, 2001 and not in August, 2000 as claimed was still working when the present claim petition was filed. The contents of said document revealed abstract of working mandays showing that petitioner to have worked for 263 days in the year, 2014, 71 days in 2013, 27 days in 2008, 261 days in 2008, 165 days in 2005, 100 days in 2004 and 30 days in 2001. Ex. RW1/D is the seniority list of daily waged workers of Forest Division Chamba as it stood on 31.3.2012 but the name of petitioner had not been mentioned in the aforestated seniority list. Cross-examination of petitioner as PW1 reveals that the respondent/department had never terminated his services besides admitted that from 2009 to 2014 petitioner had not made any complaint. He denied that he had not completed 240 days or more but the case of petitioner primarily remained that he had been given fictional breaks and that persons who were junior to him were retained despite availability of funds and work and that he was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence on record so as to determine if fictional breaks had been factually given with the object that petitioner could not complete 240 days in a given year.

13. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of September, 2001. This fact finds support from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked 263 days in the year, 2014, 71 days in 2013, 27 days in 2008, 261 days in 2008, 165 days in 2005, 100 days in 2004 and 30 days in 2001 and therefore when petitioner had served respondent for more than 200 days in several calendar years as per mandays chart, it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly established in order to escape liability, plea of forestry work being seasonal in nature has been set up by respondent. It is nowhere in evidence of respondent that forest department has been declared as seasonal worker as required under the law.

14. It is settled principle of law that plea of 'abandonment' has to prove like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before any taking action against workman Again there is no iota of evidence showing that the respondent had initiated any action in the absence of petitioner from duty. It is evident from record that no explanation of petitioner was called even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when he absented as per the mandays referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

15. It has also come in the evidence that muster roll had not been issued for whole month in a year. Even in some months muster rolls were not at all issued. No muster roll was issued as petitioner is showing to have not given any work however it is evident from the mandays chart Ex. RW1/B that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason and that no letter or notice whatsoever had been issued qua any non attendance and as such the case of petitioner given fictional breaks cannot be disbelieved. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 2000 to 2009 which is an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of "continuous service" envisaged under Section 25-B of the Act.

16. Another aspect of the case which cannot be lost sight while appreciating evidence on record is that junior workmen were allowed to be retained and that petitioner was disengaged arbitrarily by respondent in violation of Section 25-G of the Act. Examination of RW1, the then Divisional Forest Officer on oath revealed that S/Sh. Beer Chand, Surinder Kumar etc. were junior to respondent who was retained in service leading to inference that while retrenching petitioner, junior workman was allowed to be retained in service which showed arbitrary and whimsical manner in which petitioner was disengaged ignoring his seniority. As Beer Chand, Surinder Kumar, Karam Singh, Moti Ram and Smt. Musurbu Devi were admittedly junior to the petitioner per contents of Ex. PW1/C1 to Ex. PW1/C5 which are the documents of respondent/department and that the respondent on oath has also admitted this fact, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent. Ld. AR/counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time to the petitioner which is illegal and unjustified as has come in the evidence. As the petitioner himself has not discharged initial onus qua remaining unemployed during break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority **except back wages** for the reasons stated hereinabove. Issue in question is decided accordingly.

ISSUE NO.3

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and

that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of November, 2015.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 02/2015
Date of Institution : 13.1.2015
Date of decision : 30.11.2015

Shri Vias Dev s/o Shri Hari Singh, r/o Village Sikraini, P.O. Jhullada, Tehsil & District Chamba, H.P.Petitioner.

Versus

The Divisional Forest Officer, Forest Division Chamba, District Chamba, H.P.

....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryla, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Sh. Vias Dev S/O Sh. Hari Singh, R/O Village- Sikraini, P.O. Jhullada, Tehsil & Distt. Chamba, H.P. by The Divisional Forest Officer, Forest Division Chamba, Distt. Chamba, during year, 2000 to 2009 without serving notice, without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved worker is entitled to?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent on muster roll as daily waged forest worker w.e.f. August, 2000 without any written appointment order/letter who continued to work uninterruptedly under the Masroond Range upto 2009. The grievance of petitioner remains that the respondent had given fictional breaks by way of terminating the services of petitioner orally from time to time during the entire service of petitioner. It is alleged that fictional breaks had been given to petitioner by respondent with the object that petitioner did not complete 240 days in each calendar year and deprived the petitioner from regularization. The grievance of further reveal that petitioner had made various requests in person as well as in writing to the authorities concerned to reengage him on muster roll but of no avail and thereafter petitioner had served demand notice dated 14.4.2013 and copy of the same had been forwarded to the Labour-cum-Conciliation Officer, Chamba to intervene the matter and amicably settlement through conciliation. Thereafter, respondent/department had reengaged the services of petitioner w.e.f. 3rd October, 2013. It is alleged that department/respondent had not regularized the services of petitioner due to giving fictional breaks for the purpose of seniority and continuity which was obligatory on the part of the respondent as per Section 25-B (1) of the Industrial Disputes Act. The grievance of petitioner remains that the respondent/department had not followed the provisions of Section 25-G of the Industrial Disputes Act as the persons junior to him had been retained in service. The name of juniors are Gudial who joined in 1.8.2004, Bajar Singh who also joined on 01.8.2004, Karam Chand, Beeru, Gurdei, Musarbu Devi, Moti Chand, Surinder Kumar, Bias Dev and Karam Singh who joined in the years 2004, 2005, 2008 and 2011 respectively have been retained in service by the respondent. It is alleged that the aforestated juniors are still working with the respondent/department and their services had been continued by the respondent and petitioner has not given any opportunity for reemployment. It is further alleged that the respondent/department had also violated the provisions of Section 25-H of the Act as new/fresh hands have been engaged by the respondent/department. It is alleged that respondent had while giving the fictional breaks to the petitioner just to favour the junior workmen who were favorite to the respondent. It is alleged that the petitioner had completed eight years continuous service. It is further alleged that petitioner has spotless services with the respondent/department and never been charge-sheeted for any act of indiscipline, negligence of work or misconduct and petitioner had performed his duties with full devotion. Accordingly, petitioner seeks relief to the extent that fictional breaks illegally given to him be treated and counted as period of continuity in service for the purposes of his regularization along with all consequential service benefits as per CWP no. 2735/2008 titled as Rakesh Kumar vs. State of HP & Ors. and to any other relief to which petitioner is found entitled.

4. Respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits, admitted that petitioner was initially engaged in forest department in April, 2002 in nursery of Masroond Forest Range intermittently to carry out the seasonal forestry works. It is stated that the services of petitioner were not terminated by the respondent but petitioner left the work of his own sweet will in the year 2009. It is further stated that petitioner was engaged as daily waged beldar for seasonal forestry work but petitioner had not come to the work and he could not completed 240 days in each calendar year. It is stated that petitioner is still

working with the respondent/department and no fictional breaks had been given to him. It is denied that petitioner had made representations/request with the respondent for his reengagement. It is further stated that petitioner was never disengaged by the respondent but petitioner made himself available on the work of his own accord and sweet will. It is alleged that petitioner after 2008 petitioner had worked intermittently with the respondent/department and as such there was no violation of the Industrial Disputes Act. It is claimed that petitioner is still continuing to work intermittently with the department as per availability of work and funds. Asserted that the forest work was seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and works. It is alleged that respondent had not violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act. It is emphatically denied that any fictional break was given to petitioner with the object that he could not get the benefit of the provisions of Section 25-B of the Act. Similarly, violation of principle of 'Last come First go' has been alleged as against respondent when filed reply in which maintained that no persons junior to petitioner has been engaged continuously. It is further alleged that CWP No.2735/2008 titled as Rakesh Kumar vs. State of HP and Ors. is not applicable in the present case. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works the same did not constitute unfair labour practice rather petitioner engaged himself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B is the mandays chart, Ex. PW1/C1 to Ex. PW1/C5 are the mandays charts of juniors, Ex. PW1/D copy of seniority list, Ex. PW1/E1 to Ex. PW1/E4 are the copies of applications dated 13.7.2013, 1.2.2010, 5.7.2010 & 28.2.2011, Ex. PW1/F letter dated 7.10.2013 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rakesh Kumar, Divisional Forest Officer, Chamba as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 7.7.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years 2002 to 2009 is/was improper and unjustified as alleged? ...OPP.
 2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
 3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
- Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into the witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which he was engaged in August, 2000 and continued to work uninterruptedly in Masroond Forest Range upto 2009. He has specifically deposed on oath that from the year 2000 to 2009, his services had been engaged and disengaged by the respondent/department for giving fictional breaks to petitioner besides maintained the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks from 2000 till 2009, petitioner could not complete 240 days. Be it noticed that petitioner has also maintained on oath that his co-workers namely Bir Chand, Surinder Kumar, Karam Chand, Moti Ram and Smt. Musurbu Devi who were engaged in the years 2005, 2008, 2010 and 2011 respectively were in service. The petitioner has also deposed about the process of conciliation before the Labour Officer which failed consequent upon which reference was made by the appropriate government before this court for adjudication.

12. Ex. RW1/B is the mandays chart of petitioner reflecting that he had been appointed in the month of April, 2002 and not in August, 2000 as claimed was still working when the present claim petition was filed. The contents of said document revealed abstract of working mandays showing that petitioner to have worked for 46 days in the year, 2015, 202 days in 2014, 60 days in 2009, 261 days in 2008, 298 days in 2007, 290 days in 2006, 264 days in 2005, 213 days in 2004, 77 days in 2003 and 116 days in 2002. Ex. RW1/D is the seniority list of daily waged workers of Forest Division Chamba as it stood on 31.3.2012 but the name of petitioner had not been mentioned in the aforestated seniority list. Crossexamination of petitioner as PW1 reveals that the respondent/department had never terminated his services besides admitted that from 2009 to 2014 petitioner had not made any complaint. He denied that he had not completed 240 days or more but the case of petitioner primarily remained that he had been given fictional breaks and that persons who were junior to him were retained despite availability of funds and work and that he was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence on record so as to determine if fictional breaks had been factually given with the object that petitioner could not complete 240 days in a given year.

13. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of April, 2002. This facts finds support from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 2015, 202 days in 2014, 60 days in 2009, 261 days in 2008, 298 days in 2007, 290 days in 2006, 264 days in 2005, 213 days in 2004, 77 days in 2003 and 116 days in 2002 and therefore when petitioner had served respondent for more than 200 days in several calendar years as per mandays chart, it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly

established in order to escape liability, plea of forestry work being seasonal in nature has been set up by respondent. It is nowhere in evidence of respondent that forest department has been declared as seasonal worker as required under the law.

14. It is settled principle of law that plea of ‘abandonment’ has to prove like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before any taking action against workman Again there is no iota of evidence showing that the respondent had initiated any action in the absence of petitioner from duty. It is evident from record that no explanation of petitioner was called even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when he absented as per the mandays referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

15. It has also come in the evidence that muster roll had not been issued for whole month in a year. Even in some months muster rolls were not at all issued. No muster roll was issued as petitioner is showing to have not given any work however it is evident from the mandays chart Ex. RW1/B that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason and that no letter or notice whatsoever had been issued qua any non attendance and as such the case of petitioner given fictional breaks cannot be disbelieved. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 2000 to 2009 which is an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of “continuous service” envisaged under Section 25-B of the Act.

16. Another aspect of the case which cannot be lost sight while appreciating evidence on record is that junior workmen were allowed to be retained and that petitioner was disengaged arbitrarily by respondent in violation of Section 25-G of the Act. Examination of RW1, the then Divisional Forest Officer on oath revealed that S/Sh. Beer Chand, Surinder Kumar etc. were junior to respondent who was retained in service leading to inference that while retrenching petitioner, junior workman was allowed to be retained in service which showed arbitrary and whimsical manner in which petitioner was disengaged ignoring his seniority. As Beer Chand, Surinder Kumar, Karam Singh, Moti Ram and Smt. Musurbu Devi were admittedly junior to the petitioner per contents of Ex. PW1/C1 to Ex. PW1/C5 which are the documents of respondent/department and that the respondent on oath has also admitted this fact, the principle of ‘Last come First go’ envisaged under Section 25-G of the Act is held to have not been followed by respondent. Ld. AR/counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon’ble Apex Court in case titled as **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time to the petitioner which is illegal and unjustified as has come in the evidence. As the petitioner himself has not discharged initial onus qua remaining unemployed during break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority **except back wages** for the reasons stated hereinabove. Issue in question is decided accordingly.

ISSUE NO.3

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of November, 2015.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 343/2014
Date of Institution : 16.12.2014
Date of Decision : 30.11.2015

Shri Megh Raj s/o Shri Bihari Lal, r/o Village Bhanala, P.O. & Tehsil Shahpur, District Kangra, H.P.Petitioner.

Versus

The Executive Engineer, Kangra Division, H.P.P.W.D. Kangra, District Kangra, H.P.
....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Megh Raj, S/O Shri Bihari Lal, R/O Village Bhanala, P.O. & Tehsil Shahpur, District Kangra, H.P. during June 1997 by the Executive Engineer, Kangra Division, H.P.P.W.D. Kangra, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties, in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition filed by the claimant/petitioner reveal that petitioner was engaged by the respondent/department on daily wage basis as cleaner on muster roll in 1979 but at the time of his appointment, petitioner was not issued any letter and at the same time, terms and conditions of service of the petitioner were also not settled. It is alleged that in 1987, the petitioner obtained driving licence and that the respondent/department utilized the services of petitioner as driver of tipper no. HIK 3518. On 2nd March, 1993 when petitioner was on duty he had driven tipper no. HIK 3518 which had suddenly met with an accident in which one Shri Krishan Kumar died on spot for which criminal case no. 107-II/93 had been registered against the petitioner by police under Section 279/337/304-A of Indian Penal Code. It further remains the case of the petitioner that when on next day he had reported for duty, he was not allowed to join duty by Assistant Engineer, Shahpur who verbally informed him that his services had been terminated by the department but no show cause notice, charge-sheet was ever raised followed by any domestic inquiry and at the same time, one month salary as the notice period was also not paid to him and thus his termination was stated to be illegal, null and void and ab-initio. It further remains the case of petitioner that after removal from service, petitioner/claimant filed O.A. no.1808/1993 before the Hon'ble Administrative Tribunal. On 21.9.1993 in which stay was granted in his favour and petitioner had been directed to join duty on the basis of stay order who he continued to work upto 30th June, 1997. Thereafter, aforesated original application before Hon'ble Administrative Tribunal H.P. was rejected on 28.4.1997 and stay order dated 21.3.1993 was vacated giving liberty to respondent to take action as it deemed fit in the facts and circumstances of the case. In pursuance to decision of Hon'ble Administrative Tribunal, H.P., respondent/department had retrenched the services of petitioner by serving him 24 hour retrenchment notice dated 27.6.1997 w.e.f. 30.6.1997 afternoon. Again while retrenching the services of petitioner respondent/department had not given him any show cause, charge-sheet or conducted any departmental inquiry against him instead Executive Engineer, HPPWD held inquiry and retrenched petitioner under Section 25-F of

Industrial Disputes Act. Thus, petitioner had not been given opportunity of being heard before Inquiry Officer. Not only this, at that time criminal case on charge of culpable negligence was pending against before competent court and later on said criminal case has been decided on 3.8.1998. Ld. trial court had convicted petitioner but given benefit of Section 3 of Probation of Offenders Act and directed that Rs.5000/- compensation disbursed to the next kin after expiry of appeal period and directed to deal with as per the orders of ld. appellate court in the event of appeal. The grievance of petitioner further remains that even when the criminal case was pending against him respondent had hurriedly retrenched him from services without seeking permission from this court as well as from appropriate govt. It is alleged that appeal was thereafter filed before the Ld. Court of Sessions Judge Kangra at Dharamshala vide registered case no. 13-K/X-1998 and on 9.8.1998 the appeal was decided in favour of petitioner by setting aside order of the lower court of conviction of petitioner with direction that petitioner be refunded back Rs.5000/- paid by him as compensation.

4. The case of the petitioner also remains that respondent had not followed principle of 'Last come First go' by retaining juniors to him in service after retrenching him and even while engaging fresh/new hands, no opportunity of being heard was given to petitioner. After retrenchment of the services of petitioner vide retrenchment notice dated 27.6.1997, the petitioner had again approached the Hon'ble Administrative Tribunal by filing O.A. No.1663/1997. It is also the case of petitioner that vide order dated 13.7.2011 passed in CWP no.4062/2008, Hon'ble High Court had dismissed the petition against which petitioner had filed LPA no.474/2011 which has been decided by Hon'ble High Court of H.P. on 29.3.2012. During pendency of LPA, petitioner had withdrawn writ petition without prejudice with liberty to petitioner to approach the Tribunal. The plea of withdrawal of writ could not be allowed by the Hon'ble Appellate court but in view of peculiar facts and circumstances of the case, it was allowed. Accordingly, judgment under appeal was set aside and CWP (T) no. 4062/2008, the O.A. no.1663/1997 was dismissed as withdrawn and it was made clear that petitioner was at liberty to pursue his case under the provisions of the Industrial Disputes Act.

5. It further remains the case of petitioner that after the decision of Hon'ble High Court of H.P., LPA no. 474/2011 dated 20.3.2012, the petitioner submitted application before Labour Inspector-cum-Conciliation Officer, Dharamshala along-with his demand notice dated 15.5.2012. It is also alleged that petitioner had been working with the department since 1979 but his services had not been regularized as per policy of the Mool Raj Upadhyaya's case after completion of 10 years of continuous service as Class-IV in the capacity of cleaner w.e.f. 1.1.1994 in the pay scale of Rs.750-1410/- with initial start of Rs.770/- per month. The grievance of the petitioner primarily remains that respondent/department had utilized his services in capacity of highly skilled category of Tipper driver but his wages of highly skilled as tipper driver was not being paid. It is alleged that petitioner had rendered 10 years continuous service from 1979 to 30.6.1997 besides completed 240 days in preceding 12 month of calendar year as was required under law. It is alleged that the services of petitioner had been orally terminated on 3.3.1993 and again reengaged him in services on 21.9.1993 in pursuance to the order of Hon'ble Administrative Tribunal, H.P. and finally retrenched on 27.6.1997 w.e.f. 30.6.1997. The grievance of the petitioner also remains that he had remained unemployed and not gainfully employed anywhere ever since his termination. Thus, it is alleged that respondent had violated mandatory provisions of Section 25-F of the Industrial Disputes Act. It is also asserted that respondent had not followed the provisions of Section 25-N of the Industrial Disputes Act while retrenching service of petitioner. Accordingly, petitioner prays that verbal order dated 3.3.1993 be set aside and quashed with direction to respondent to consider the period 3.3.1993 to 21.9.1993 in continuity of service of petitioner and also set aside illegal termination order dated 27.6.1997 w.e.f. 30.6.1997 with direction to reinstate the service of petitioner forthwith with full back wages, seniority and continuity in service.

6. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits admitted that petitioner was engaged by the department on daily wage basis as cleaner on muster roll in the year 1979. It has been emphatically denied that petitioner was assigned duty of Tipper no HIK-3518 and that no such duty of driver was performed by the petitioner as claimed by the petitioner on the aforesaid tipper. It has been denied that petitioner was engaged to drive tipper no. HIK 3518 on 2nd March, 2013 rather driver of the truck namely Om Prakash had taken the tipper to Shahpur Darini and on the relevant date went inside the office of Sub Division in connection with his salary after parking the truck outside the said office when claimant/petitioner removed the vehicle unauthorizedly by driving it and met with accident, causing death of one Krishan Chand cleaner in the said tipper no. HIK 3518 which was badly damaged in the accident. It has been denied that petitioner was not allowed to join duty rather he because of his own fault in the accident did not resume duty and for said reason, question of termination of the services, issuance of show cause notice, charge-sheet and notice of one month pay did not arise rather departmental inquiry was held and petitioner was found responsible for the accident. It has been contended that before terminating the services of petitioner after holding inquiry, 24 hours notice was served upon the petitioner under Section 25-F of the Industrial Disputes Act and that one month wages were also paid to the petitioner. It is also stated that charges levelled against the petitioner were proved in the inquiry as per observation of Hon'ble Administrative Tribunal, H.P. as well as order of Hon'ble High Court and as such holding of domestic inquiry as contended by the claimant/petitioner did not arise. It is also asserted that departmental inquiry committee had given full opportunity to petitioner to defend his case before the inquiry committee but petitioner has failed to prove that he was not guilty and therefore there was no violation of principle of natural justice contended by petitioner. Not only this, claimant/petitioner had also been ordered to pay compensation of Rs.5000/- under Section 3 of Probation of Offenders Act which establishes that the fault of petitioner in accident. It is also stated that judgment of Mool Raj Upadhaya's case did not apply to the petitioner as he himself was defaulter who had left the job of his own before the policy of regularization got effective in his case w.e.f. 1.1.1994. Thus, denying cause of action claim petition was sought to be dismissed.

7. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is stated that Om Prakash driver of department had handed over the tipper in question to petitioner at about 6:30 p.m. to drop the labourers at their nearest home place. It is also asserted that no proper inquiry was held as no chargesheet was served upon him. As such, the action of the respondent in not allowing the petitioner to join duty 3.3.1993 to September, 1993 and finally terminating his services in 1997 is stated to be highly unjustified, arbitrary and against the provisions of the Industrial Disputes Act.

8. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, tendered/proved demand notice Ex. PW1/B, Ex. PW1/C experience certificate, Ex. PW1/D receipt acknowledging payment of fine and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Surinder Paul Jagota, the then Executive Engineer, HPPWD Kangra as RW1, tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of daily wages cleaners, Ex. RW1/D copy of seniority list of regular cleaner, Ex. RW1/E copy of letter dated 27.6.1997, Ex. RW1/F copy of inquiry report, Ex. RW1/G copy of notice dated 27.6.1997, Ex. RW1/H copy of order dated 28th April, 1997, Ex. RW1/I copy of order dated 29.3.2012 passed in LPA no.474 of 2011, Ex. RW1/J copy of order dated 13.7.2011 passed in CWP(T) No.4062/2008 and Ex. RW1/K copy of receipt and closed evidence.

9. I have heard the ld. counsel representing for the parties, gone through records of the case carefully relevant for disposed of this case.

10. From the contentions raised, following issues were framed on 23.05.2015 for determination:

1. Whether termination of the services of the petitioner by the respondent during the year June, 1997 is/was improper and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the petition is not maintainable in the present form as alleged? OPR
4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? ...OPR.

Relief.

11. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 2

12. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

13. Chronology of events unfolded by the documents on record revealed that claimant/petitioner was appointed as cleaner in the year 1979 on daily wage basis in the office of Assistant Engineer, Sub Division Shahpur who got driving licence in the year 1987. It is also evident from records that the services of petitioner were terminated verbally. It remains the case of the petitioner that he reported for duty on 3.3.1993 when his services were terminated by the Assistant Engineer, Shahpur as on 2nd March, 1993 petitioner had allegedly caused accident of tipper no. HIK 3518 in which one Krishan Kumar one of occupant of truck sustained fatal injuries who succumbed to injuries followed by registration a criminal case no. 107-II/93 against petitioner under Section 279/337/304-A of Indian Penal Code. The case of the petitioner further remains that while retrenching him from service by respondent no show cause notice, charge-sheet was served and at the same time no inquiry was conducted and at the same time payment of one month's pay in lieu of notice period i.e. retrenchment compensation was not made which makes the termination order illegal and null and void. The case of the petitioner also remains that of being terminated from service vide verbal order dated 03.03.1993, he moved before the Hon'ble Administrative Tribunal H.P. by filing Original Application no. 1808/93, on 21.9.1993 in which stay was granted when the petitioner was allowed to join his duties however said stay continued upto 30th March, 1997 when it was decided on 28.4.1997 and the case of petitioner was rejected vacating stay order dated 21.9.1993 with liberty to the respondent to take action as it deemed fit in the facts and circumstances of the case.

14. Admittedly, in pursuance to order dated 28.4.1997 the Hon'ble Administrative Tribunal H.P. the respondent/department had retrenched the services of petitioner, serving him 24 hours legal notice dated 27.6.1997 which was valid w.e.f. 30.6.1997. It is also remains the case of claimant/petitioner that criminal case registered against him on account of accident was not decided till 30.6.1997 rather it was decided on 3.8.1998 in which he was convicted but given benefit of provisions of Section 3 of the Probation of Offenders Act subject to deposit of compensation of Rs.5000/- to be disbursed to the next kin of deceased after expiry of appeal period. The said order was stated to have been passed by the ld. Additional Chief Judicial Magistrate Kangra at Dharamshala against which petitioner preferred appeal before the Court of Ld. Sessions Judge Kangra at Dharamshala, registered at no.13-K/X-1998 in which the appeal was accepted and the order of conviction and payment of compensation was set aside. It further remains the case of the petitioner that after retrenchment of petitioner, he moved an original application before the Hon'ble Administrative Tribunal H.P. bearing O.A. No.1663/1997 which was consequentially transferred to Hon'ble High Court and vide order dated 13.7.2011 writ petition was dismissed against which he preferred an appeal and LPA no.474/2011 was filed which was decided on 29.3.2012. The judgment of Hon'ble Single Judge dated 13.7.2011 was set aside and the petitioner was allowed to withdraw the writ petition with liberty to pursue remedy under the provisions of the Industrial Disputes Act. Thereafter, petitioner claims to have moved before the Labour-cum-Conciliation Officer, Dharamshala raising demand notice dated 15.5.2012 and on failure of conciliation report, the case was sent to this court for adjudication. In the backdrop of foregoing admitted facts on records, the claim of petitioner needs to be adjudicated to determine if his termination from service by Executive Engineer, HPPWD Kangra was without complying with the mandatory provisions of the Industrial Disputes Act.

15. In the witness box as PW1, petitioner has deposed on oath as maintained in the claim petition. He has asserted that the action of department in verbally terminating services w.e.f. 2nd March, 1993 and not to reengage him in service w.e.f. 21.9.1993 and finally retrenching his services after giving him 24 hours notice dated 27.6.1997 w.e.f. 30.6.1997 manifestly illegal and unjustified. Cross-examination of petitioner revealed that he was engaged as cleaner on daily wage basis on tipper no. HIK 3518. He has further admitted that Om Prakash was the driver of the tipper who took vehicle on 2nd March, 1993 and had parked the vehicle in question on road side and went to Sub Division office to inquire about the salary. He has admitted facts qua criminal case registered against him before the ld. Magistrate and direction to pay compensation of Rs.5000/-. On the other hand, respondent had examined Shri Surinder Paul Jagota, the then Executive Engineer, HPPWD Kangra as RW1 filed his affidavit Ex. RW1/A repudiating the allegations of the petitioner and has tendered/proved various documents as the Ex. RW1/B1 to Ex.RW1/K which are on record.

16. Cross-examination of RW1 Shri Surinder Paul Jagota, Executive Engineer revealed that petitioner had worked without any break from 1979 to 1992. Similarly, RW1 has admitted that petitioner had gone to drop labourers in above said tipper which had met with accident causing death of Krishan Kumar. This witness although made futile attempt to justify claim of the respondent by stating that petitioner had unauthorisedly removed the truck in question but he could not plead as petitioner on oath unequivocal terms has stated that he was official deputed to drive tipper in question as can also be gathered from certificate Ex. RW1/C issued by Assistant Engineer, Shahpur. Not only this, he was signing log book which had been deliberately not produced and withheld by respondent/department which was material piece of evidence. Be it noticed that petitioner had moved application under Section 11 (3) wherein he has asked the respondent to produce the log book which was not produced on the plea that it was not traceable. Perhaps log book was the best document with the aid of which it could be established that who was the person driving the truck in question at the relevant time. It is equally important to mention here that driver Om Prakash was not examined by the respondent for reason best known to respondent which could through adequate light on the true facts of case showing the manner in which accident took place. Be it noticed that RW1 in cross-examination has admitted that he had never seen that petitioner

driving truck. Cross-examination of RW1 in ambiguous terms revealed that log book of truck no. HIK 3518 which was not produced before this tribunal thus, presence of claimant/petitioner on offending vehicle on the relevant time becomes highly doubtful in absence of log book and reliable testimony of other occupants who were also admittedly present in the truck on the relevant date.

17. The plea of the respondent also remains that petitioner himself did not report for duty on 3rd March, 1993 after the accident due to of his own conduct in which he caused accident of official tipper but fact of abandonment has to be proved like any other fact in issue and by merely stating that petitioner had abandoned the job is not sufficient to conclude that he had left the job moreso when petitioner could be easily contacted or called to join for duty by respondent. No correspondence to this effect has been proved by respondent. Instead on being verbally terminated from service as has come in evidence, petitioner was left with no option to approach the Hon'ble Administrative Tribunal H.P. where stay was granted and the petitioner was directed to be engaged and in pursuance to orders of Hon'ble Administrative Tribunal petitioner continued to work till 30th June, 1997 when his original application was dismissed and department had held an inquiry through Executive Engineer, HPPWD Kangra holding him guilty of misconduct of having caused accident of vehicle bearing no. HIK 3518. Ex. RW1/E is the letter written by Executive Engineer, HPPWD Kangra addressed to Secretary, Government of H.P. notifying that services of petitioner have been terminated under Section 25-F of the Industrial Disputes Act.

18. Close scrutiny of the inquiry report annexed with Ex. RW1/E which has been retyped and attested by Executive Engineer, Kangra as it was not eligible showed that no regular charge-sheet was served upon claimant/petitioner rather inquiry committee was constituted by Superintending Engineer vide letter dated 28.12.1993. The report in question shows that inquiry officer Executive Engineer, HPPWD found that truck had met with accident and got badly damaged. The inquiry report shows that petitioner was held responsible for entire episode qua allegations contained in the inquiry report. The inquiry report further revealed that in pursuance to decision in O.A. no.1880/1993, the report which postulates retrenchment of petitioner infact did not show any corresponding record that any charge sheet was sent and show cause notice was served and petitioner was called. As such, the entire inquiry proceedings gets vitiated in view of the judgment of Hon'ble Apex Court reported in **2000 LLR 577** titled as **Nar Singh Pal vs. Union of India & Ors.** relevant paras are reproduced below:

“A. Termination of service-Validity of Casual employee who secured status of temporary employee-Criminal case on allegation of assaulting watchman- Termination without regular enquiry- Retrenchment compensation under section 25-F paid. Termination of service punitive. Termination order on basis of preliminary enquiry without regular enquiry unsustainable. Termination order set aside. Reinstatement with backwges and consequential benefits ordered.

Held

Once an employee attains the ‘temporary’ status, he becomes entitled to certain benefits one of which is that he becomes entitled to the constitutional protection. **If an order had been passed by way of punishment and was punitive in nature, it was the duty of the respondents to hold a regular departmental enquiry and they could not have terminated the services of the appellant arbitrarily by paying him the retrenchment compensation. The observation of the Tribunal that the respondents has a choice either to hold a regular departmental enquiry or to terminate the services by payment of retrenchment compensation is wholly incorrect.**

Further Held

It was an order passed by way of punishment and, therefore, was an order of dismissal which, having been passed without holding a regular departmental enquiry, cannot be sustained. **The order having been passed on the basis of regular departmental enquiry without issuing a chargesheet or giving an opportunity of hearing to the appellant, cannot be sustained”.** Paras 8 & 10

19. A bare glance on the judgment of aforestated would reveal that a regular domestic inquiry was mandatorily required to be held by respondent if there was misconduct on part of petitioner as in case of retrenchment, no misconduct could be attributed within meaning of Section 25-F of the Industrial Disputes Act. Thus, issuance of charge-sheet calling upon the reply was prerequisite before taking any disciplinary action which has not so done by the respondent in this case. Ld. Authorized Representative for petitioner has also relied upon another landmark judgment of Hon’ble Apex Court reported in [2006 (109) FLR 1] titled as **South Bengal State Transport Corporation vs. Swapna Kumar Mitra and others**. The aforesaid judgment clearly postulate that non supply copies of inquiry report and other documents relied vitiates the departmental proceedings and set aside the removal order. It was held that serious prejudice had been caused to the respondent if the documents on which reliance was placed by the authorities in removing him service were not supplied to him and thus denial of reasonable opportunity being heard. It is nowhere in the evidence of the respondent that the copies of report or other document which had been relied upon by Executive Engineer, HPPWD Kangra Division submitted his report Ex. RW1/F retrenching claimant/petitioner under Section 25-F of the Industrial Disputes Act established that these documents were ever supplied rather the findings prima facie appears to be that inquiry committee had fixed responsibility upon the petitioner for accident holding him liable for major penalty. Applying the ratio of judgments referred to above, it may not erroneous to conclude here that no reasonable opportunity of being heard was given to petitioner when tipper no. HIK 3518 met with accident and that the inquiry report Ex. RW1/E was forwarded to the appropriate govt. after conclusion of case before the Hon’ble Administrative Tribunal H.P. which in no manner established that a proper domestic inquiry was held as required under law.

20. In **Raghbir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** the Hon’ble Apex Court has held as under in para no. 27 of judgment:

“27. In the present case, before passing the order of dismissal for the act of alleged misconduct by the workman-appellant, the respondent should have issued a show cause notice to the appellant, calling upon him to show cause as to why the order of dismissal should not be passed against him. The appellant being an employee of the respondent was dismissed without conducting an enquiry against him and not ensuring compliance with the principles of natural justice. The second show cause notice giving an opportunity to show cause to the proposed punishment before passing the order of termination was also not given to the appellant-workman by the respondent which is mandatory in law as per the decisions of this Court in the case of Union of India and others v. Mohd. Ramzan Khan[7] and Managing Director, ECIL, Hyderabad, v. Karunakar[8]”.

21. It was further observed by Hon’ble Apex Court in para nos. 35 & 36 of judgment (supra):

“35. Having regard to the facts and circumstances of this case, we are of the view that it is important to discuss the Rule of the ‘Doctrine of Proportionality’ in ensuring preservation of the rights of the workman. The principle of ‘Doctrine of Proportionality’ is a well recognised one to ensure that the action of the employer against employees/workmen does

not impinge their fundamental and statutory rights. The above said important doctrine has to be followed by the employer/employers at the time of taking disciplinary action against their employees/workmen to satisfy the principles of natural justice and safeguard the rights of employees/workmen.

36. The above said “Doctrine of Proportionality” should be applied to the fact situation as we are of the firm view that the order of termination, even if we accept the same is justified, it is disproportionate to the gravity of misconduct. In this regard, it would be appropriate for us to refer to certain paragraphs from the decision of this Court in the case of Om Kumar and Ors. v. Union of India[12], wherein it was held as under:-

“66. It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequal are treated equally, the question is for the Constitutional Courts as primary reviewing Courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Hence the Court deals with the merits of the balancing action of the administrator and is, in essence, applying 'proportionality' and is a primary reviewing authority.

22. Be it noticed that Ex. RW1/G is copy of notice of retrenchment of 24 hours of payment of compensation which appears to be not legally valid as retrenching worker could not be punitive in nature. Once the inquiry report stipulates that the claimant/petitioner was retrenched, it necessarily follows that there was no “misconduct” on part of worker but the report of Executive Engineer annexed with letter Ex. RW1/E stipulates that misconduct had been committed by the petitioner for which he had never been given any opportunity of being heard. Not only this, misconduct which is alleged to be proved by respondent which has although not been proved in accordance with law was certainly disproportionate to misconduct committed even if said misconduct is held to have been proved in view of observations of Raghbir Singh’s case referred to supra.

23. It has rightly been contended by the ld. Authorized Representative of petitioner that claimant/petitioner was not authorized to drive the tipper in question in performance of his duty rather he was asked or made to drive tipper by the department when he obtained driving licence his service tenure in 1987 in which no fault can be attributed to petitioner. Moreover, the criminal liability attributed upon petitioner by the ld. Trial Magistrate vide which petitioner as accused was convicted for offences under Indian Penal Code and granted benefit of Section 3 of the Probation of Offenders Act. Be it noticed that said judgment of trial magistrate was set aside by ld. Sessions Judge, Kangra at Dharamshala by acquitting him for all the offences for which petitioner was convicted. As such, there is no reliable evidence on record establishing that petitioner drove a vehicle in question and at the same time no inference could be drawn that it took place due to his negligent driving vehicle as ld. Sessions Judge has set aside findings of conviction against him. Accordingly, it is held that respondent had failed to comply and the mandate of the provisions of Section 25-F while terminating the services of the petitioner moreover respondent/department has failed to prove that petitioner had abandoned the job voluntarily of his own accord as stated in foregoing paras.

24. In so far as allegation of violation of principle of ‘Last come First go’ retaining persons junior to him in service is concerned, reliance is placed on the seniority list of daily/regular cleaner which is Ex. RW1/D which shows that all the persons mentioned at serial no.1 to 10 had been appointed from 1976 onwards till 2014 out of which those some had joined in 1994, in 1997, 2006 have been regularized. This shows that persons who were junior to petitioner had been retained and

regularized in service by respondent. The plea of the petitioner also remains that he had rendered more than 10 years service and that with applicability of judgment of Mool Raj Upadhyaya's case, he was entitled to be regularized on specific date after completion of service in 1993. Since the matter was subjudice at various stages as such for cause of termination of the services of petitioner there can be no occasion for the respondent to have considered regularization of petitioner who was out of service and at this stage it would be left open to respondent to consider his regularization after the award.

25. On the point of gainful employment of the petitioner after his termination from service, suffice would be state here that petitioner himself has admitted on oath while filing claim petition and also admitted in cross-examination that he had agriculture land and was earning by working as labourer also. As such, it cannot be concluded in any manner that petitioner was not gainfully employed and thus would not be entitled for back wages and on this point judgment of Hon'ble Apex Court in case titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** comes to the rescue of respondent. Except the above, petitioner would be entitled for reinstatement with full back wages. In view of the foregoing discussions, issue no. 1 is answered in affirmative and issue no.2 is decided holding that petitioner is liable to be reinstated with seniority and all the consequential benefits except back wages as stated above.

ISSUE NO.3

26. Claim petition filed by the petitioner cannot be stated to be not maintainable as petitioner has established that his services have been terminated without recourse to lawful procedure and relevant provisions of the Industrial Disputes Act as he had not been also afforded opportunity being heard before passing of inquiry report Ex. RW1/E by the Executive Engineer, HPPWD, Kangra on the basis of which petitioner was retrenched. As such, petition is held to be maintainable. This issue is answered in favour of petitioner and against the respondent.

ISSUE NO.4

27. Ld. Dy. D. A. for the State contended that claim petition is bad on account of delay and laches as after the accident on 2nd March, 1993 petitioner did not report for duty instead filed petition before the Hon'ble Administrative Tribunal H.P. where he got stay which was vacated on 30.6.1997 in pursuance to which inquiry was held and he was removed from service in 1997 whereas the reference received from the appropriate govt. on 2nd December, 2014. As such, petitioner is not entitled to be reinstated with other service benefits as stated above. Careful scrutiny of the documents on record would reveal that claimant/petitioner had filed the claim before the said authorities and finally in pursuance to order dated 29.3.2012 passed in LPA no. 474/2011 he moved before the Labour-cum- Conciliation Officer by demand notice Ex. PW1/B dated 11.6.2012 which has remained unrepplied. Thus, withdrawing his writ petition before the Hon'ble High Court in which the Hon'ble High Court had permitted the petitioner to withdraw his writ with the liberty to seek remedy under the provisions of Industrial Disputes Act followed by issuance of demand notice as stated above cannot be termed as inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent and thus having given reasonable explanation, the period under which he could not come before this Tribunal is satisfactorily explained and it is held that claim petition is not bad on account of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

28. As sequel to my findings on foregoing issues, the termination order dated June, 1997 of respondent qua petitioner's is quashed and set aside and the respondent is hereby directed to

reinstate the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. However, it is made clear that aspect of regularization of the services of claimant/petitioner in view of the verdict of Mool Raj Upadhyaya's case shall be considered by competent authority and petitioner shall be considered for regularization by respondent at the time when his juniors have been regularized. The parties, however, shall bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of November, 2015.

Sd/-
(K. K. SHARMA)
*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 247/2013
Date of Institution : 23.12.2013
Date of Decision : 30.11.2015

Shri Pamplu Ram s/o Shri Kanhiya Ram, r/o Village Jakhol, P.O. Kangoo, Tehsil Sundar Nagar, District Mandi, H.P.Petitioner.

Versus

The Divisional Forest Officer, Forest Division Suket at Sundar Nagar, Distt. Mandi. H.P.
....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether time to time termination of the services of Sh. Pamplu Ram S/O Sh. Kanhiya Ram, R/O Village-Jakhol, P.O. Kangoo, Tehsil Sundar Nagar, Distt. Mandi, H.P. during

year 2000 to 2010 and finally during August, 2010 by The Divisional Forest Officer, Suket Forest Division, Sundar Nagar, Distt. Mandi, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. In pursuance to receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts of the case as set up in the claim petition reveal that petitioner had been engaged by respondent/department w.e.f. 01.10.1999 on daily rated basis in Suket Forest Division Sundar Nagar. It is claimed that petitioner had been given fictional breaks by the department by giving fictional breaks from date of initial engagement till 30.8.2010 and finally terminated on 31.8.2010. It is alleged that while giving fictional breaks to petitioner, respondent had retained junior namely Lal Chand, Indira Devi, Dola Ram, Jai Chand, Jagar Nath, Sohan Lal, Ganga Ram, Narpat Ram, Krishan Lal, Daya Krishan, Chaman Lal, Dharam Singh, Aashish Kumar and Angat Kumar and they were allowed to complete 240 days in each calendar year. It is further claimed that when petitioner was granted fictional breaks till 30.8.2010, the respondent had not allowed to petitioner to do the forest work in future. It is claimed that respondent had wrongly and illegally given fictional breaks to petitioner and he was not gainfully employed during the period of fictional break. It is stated that Labour Commissioner had inadvertently sent wrong reference earlier with regard to termination of the services of petitioner but petitioner requested the Labour Commissioner to send a fresh reference/corrigendum with respect to fictional breaks and termination in the year 2010 and thereafter Labour Commissioner had sent the same however, earlier reference no. 220/2010 which had been disposed of by the this Court on 19.1.2013. It is alleged that the act of respondent/department was wrong, illegal and against the provisions of Sections 25 (b), 25(F), 25(G) and 25-H of the Industrial Disputes Act, 1947 (hereafter called as 'the Act' for brevity). It is claimed that petitioner had requested with the respondent many times to stop giving petitioner fictional breaks but of no avail. Accordingly, petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability and claim petition being bad on account of delay and laches. On merits, it is claimed that petitioner had been engaged as casual labourer in the month of January, 2000 to carryout seasonal forestry works in Kangoo Forest Range of Suket Forest Division and not in January, 1999 as alleged by petitioner and he worked upto August, 2010 intermittently. It is further stated that at the time of engagement of petitioner in the year 2000, he was duly apprised by the field staff that respondent/department not in a position to provide work for whole year. It is maintained that the petitioner was engaged for seasonal activities of the forest department i.e. plantation, fencing, fire season etc. It is further stated that no fictional breaks were ever given to petitioner by the respondent/department but he had left the job of his own sweet will but as and when petitioner approached the respondent/department his services had been utilized as daily wage service which is clear from the mandays chart. It is denied that juniors were retained by the respondent however daily waged workers were called for work subject to availability of works as envisaged on principle of 'Last come First go'. It is further stated that no fictional breaks were ever given to petitioner but he had left forestry work of his own sweet will and convenience intermittently and he could not complete 240 days of continuous service in each calendar year besides petitioner was gainfully employed as an agriculturist for his livelihood. Thus, denying allegation of fictional breaks from time to time as well as final termination, claim petition is sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, respondent examined RW1 Dr. L.C. Bandana, the then Divisional Forest Officer, Suket Forest Division Sundernagar, tendered/proved her affidavit Ex. RW1/A, Ex. RW1/B copy of mandays chart of petitioner, Ex. RW1/C copy of mandays chart of mazdoors and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed by my ld. Predecessor on 10.7.2014 and later recasted issues vide order dated 31.10.2015 which are as under for determination:

1. Whether time to time termination of the services of Sh. Pamplu Ram by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, Distt. Mandi during the year 2000 to August, 2010 is/was illegal and unjustified as alleged? ...OPP.
2. Whether final termination of the services of petitioner by the respondent during year August, 2010 is/was illegal and unjustified as alleged? ...OPP.
3. If issue no.1 or issue no.2 or both are proved in affirmative, whether the petitioner is entitled to back wages, salary, seniority, past service benefits and compensation as prayed for are entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged?OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief : Petition is allowed in part per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner being engaged as labourer on daily wage basis on muster roll is not in dispute but their remains dispute with regard to time he was factually appointed. As

mentioned in his claim petition as well as affidavit petitioner has maintained to have been employed/engaged by the respondent/department in the year 1999 whereas respondent in its reply has maintained petitioner was engaged as casual labourer at Suket Forest Division in January, 2001. Thus controversy can be resolved with the aid of mandays chart Ex. RW1/B which has been relied upon by the respondent stipulating therein that in the year 2000 petitioner was appointed and in said year he had worked for 12 days. The testimony of petitioner on oath that he was engaged in the year 1999 merits rejection in view of the fact that there is no corresponding records such as muster roll or entry reflected in mandays chart which would show that petitioner was engaged in 1999. At the same time, plea of petitioner that his services had been finally terminated by the respondent in August, 2010 as alleged in his affidavit Ex. PW1/A is certainly not in consonance with evidence on record.

12. In so far as the plea of claimant/petitioner qua final termination in the month of August, 2010 is concerned, it would be relevant to mention here that petitioner in his cross-examination has admitted that he was appointed in the year January, 2000. It is also admitted that petitioner had never completed 240 days. However, on the point of time to time termination of the services of petitioner, suffice would be to state here that as per mandays chart Ex. RW1/B petitioner had worked for 12 days in the year 2000, 151 days in 2001, 179 days in 2002, 156 days in 2003, 163 days in 2004, 150 days in 2005, 178 days in 2006, 95 days in 2007, 113 days in 2008, 124 days in 2009 and 20 days in 2010. He has further stated that while giving fictional breaks to the petitioner, respondent/department has not adhered to the principle of 'Last come First go' envisaged under Section 25-G of the Industrial Disputes Act as several persons junior to him had been retained continuously without any break. He has maintained in his claim petition that several persons namely Dola Ram, Indira, Jai Chand and Jagar Nath were junior to him whose services have been regularized. He has also alleged that petitioner had raised the industrial dispute against the respondent/department for condoning his illegal break period in continuity of his service and revoke the same but no action was taken due to which a reference was made by Labour Commissioner and during conciliation dispute could not be resolved in pursuance to which failure report was submitted, consequently government had made reference for adjudication. He has also stated that the act of respondent giving fictional breaks was illegal, arbitrary and unconstitutional and same was unfair labour practice within the meaning of Vth Schedule clause 10 of the Industrial Disputes Act. The plea of respondent, on the other hand remained that that the work for which the petitioner was engaged was seasonal in nature and that petitioner used to come and go of his own who was not regular in attending the work and therefore having abandoned the job, it could not be stated that petitioner was given fictional breaks by the respondent. In so far as the plea of work having been assigned to the petitioner being seasonal in nature is concerned, there is no notification about the work on forest department Suket to be seasonal in nature and at the same time when other workers as reflected in the seniority list Ex. RW1/C are shown to have been given job more than 240 days continuously and for that reason they were regularized, the only inference that may be drawn is that petitioner had been given fictional breaks by respondent deliberately and the plea of respondent that petitioner himself abandoned the job merits rejection.

13. In so far as the plea of abandonment of the job by petitioner is concerned, it was to be proved by the respondent by leading cogent and convincing evidence but in this case, there is no iota of evidence that respondent had taken any action against the petitioner on his unauthorized absence as neither any legal notice nor any proceedings were initiated against the petitioner. Certainly, several persons junior to the petitioner who joined in service after 2000 to 2010 had not been given break in service and therefore they had been regularized which further strengthens of plea of petitioner that the provisions of Section 25-H of the Act was not followed which can also be construed as unfair labour practice. Since the respondent has adopted the different yardstick in giving work to petitioner and other co-workers, it is to be held that petitioner was deliberately given fictional breaks so that he could not avail the benefit of Section 25-B of the Act. In view of

foregoing, there is nothing in the evidence of the respondent which would show that the claim of the petitioner is false with regard to time to time termination however his claim for final termination deserves to be rejected as petitioner has not worked for 240 days in 12 months preceding his termination and thus provisions of Section 25-F of the Industrial Disputes Act cannot be stated to have been violated at the time of final termination. In so far as the petitioner having remained gainfully employed is concerned, suffice would be to state here that the petitioner in his cross-examination has admitted that he was looking after agriculture from which he had earning/income and thus the petitioner being without earning during break period could not be accepted or that he was not gainfully employed. Issue in question is accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO.4

14. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.5

15. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2000 to 2010 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by Id. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs.**

Sirhind Co-operative Marketingcum- Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

16. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

17. As sequel to my findings on issues nos. 1 to 3, petition is allowed in part and time to time termination of the services of petitioner from January, 2000 to 2010 by Divisional Forest Officer, Suket Forest Division Sundar Nagar is held to have been done without complying with the mandatory provisions of Industrial Disputes Act. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner holding that the petitioner shall be deemed to be in continuous service of respondent with all consequential benefits **except back wages** who shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. However, claim of petitioner qua final termination during August, 2010 is declined and his claim to this extent is rejected. The parties, however, shall bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of November, 2015.

SD/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

HIMACHAL PRADESH TWELFTH LEGISLATIVE ASSEMBLY

NOTIFICATION

Shimla-171004, the 19th February, 2016

No. VS-Legn.-Panel/ 1-11/2013.—In pursuance of rule 12 of the Rules of Procedure and Conduct of Business of Himachal Pradesh Legislature Assembly, 1973, the Hon'ble Speaker has

been pleased to nominate the following Members on the panel of Presiding Chairpersons for the year 2016 :—

1. Smt. Asha Kumari
2. Shri Suresh Bhardwaj
3. Shri Kuldip Kumar

By order,
SUNDER SINGH VERMA,
Secretary,
H.P. Legislative Assembly.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA – 171 001

NOTIFICATION

Shimla, the 16th February, 2016

No. HHC/GAZ/14-323/2011.—Hon'ble the Chief Justice has been pleased to grant 10 days earned leave w.e.f. 22.2.2016 to 2.3.2016 with permission to prefix Sunday falling on 21.2.2016 in favour of Ms. Upasna Sharma, Civil Judge (Jr. Division)-cum-JMIC (I), Solan.

Certified that Ms. Upasna Sharma is likely to join the same post and at the same station from where she proceeds on leave, after expiry of the above period of leave.

Also certified that Ms. Upasna Sharma would have continued to hold the post of Civil Judge (Jr. Division)-cum-JMIC (I), Solan, but for her proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA - 171 001

NOTIFICATION

Shimla the 16th February, 2016

No. HHC/Admin.6 (23)/74-XIII.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 2(32) of Chapter 1 of H.P. Financial Rules, 2009, has been pleased to declare the Civil Judge (Jr. Division)-cum-JMIC(II), Solan as Drawing and Disbursing Officer in respect of the Court of Civil Judge (Sr. Division)-cum-CJM, Solan and also the Controlling Officer for the purpose of T.A. etc. in respect of class-II, III and IV establishment attached to the aforesaid court under head “2014—Administration of Justice” during the leave period of Smt. Anuja Sood, Civil Judge (Senior Division)-cum-CJM, Solan with effect from 4.2.2016 till she joins her duties.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171 001**NOTIFICATION***Shimla, the 16th February, 2016*

No. HHC/Admin.16 (9)74-VII.—Hon'ble the Chief Justice, in exercise of the powers vested in him U/s 139(b) of the Code of Civil Procedure, 1908, U/S 297(b) of the Code of Criminal Procedure, 1973 and Rule 5(vi) of the H.P. Oath Commissioners (Appointment & Control) Rules, 2007 has been pleased to appoint Sh. Rajesh Kumar, Ms. Preeti Kaushal and Ms. Nutan Dixit, Advocates, Jogindernagar as Oath Commissioners at Jogindernagar, District Mandi, H.P. for a period of two years with immediate effect for administering oaths and affirmations on affidavits to the deponents under the aforesaid Codes and Rules.

By order,
Sd/-
Registrar General.

TRANSPORT DEPARTMENT**NOTIFICATION***Shimla-2, the 20th February, 2016*

No. TPT-F (1)-3/2015 .—In continuation of this department notification No. Tpt-F (1)-4/1996-V-Loose dated 5.3.2014, 2.8.2014, 30.12.2014, 27.2.2015 and 19.5.2015, the Governor, Himachal Pradesh in pursuance of the powers conferred under clause (iii) of proviso to sub rule (1) of rule 108 of the Central Motor Vehicle Rules, 1989 and all other powers enabling him in this behalf, is pleased to allow/specify the following dignitaries authorized to use Red/Amber/Blue Light to the front top of their official vehicles. This notification will be effective from the date of publication in H.P. Rajpatra (Extra-ordinary):—

1. Amber Light with flasher:
 - i. Former Speaker, Himachal Pradesh Vidhan Sabha.

2. Blue Light with flasher:
 - i. President/Chairman, State Consumer Protection Commission.
 - ii. Chairman, State Finance Commission.
 - iii. Chairman, H.P. Electricity Regulatory Commission.
 - iv. Chancellor/Vice Chancellor of all the State Universities-Government Universities.
 - v. Vice Chancellor, Central University.
 - vi. Chairman, H.P. State Pollution Control Board.
 - vii. Members, H.P. Public Service Commission.

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- viii. Principal Accountant General (Audit), H.P.
- ix. Accountant General (Accounts & Entitlements), H.P.
- x. Chief Commissioner of Income Tax, H.P.
- xi. Chief Post Master General.
- xii. Registrar, Himachal Pradesh High Court.
- xiii. All Chairman / Vice-Chairman of Board/Corporations/Commissions/Authorities established by Central/State Governments.
- xiv. Principal Chief Conservator of Forest (Wildlife).
- xv. All Army Officers/Central Armed Police Forces Vehicles (ITBP, CRPF, CISF and SSB) of the rank of Brigadier or equivalent and above.
- xvi. Director General, Inspector General, Deputy Inspector General and Commanding Officers of ITBP visiting the State.
- xvii. All Chairpersons of Zila Parishads in Himachal Pradesh.

3. Blue Light without flasher:

- i. Additional District and Session Judges including officers on deputation.
- ii. Commissioner, Municipal Corporation, Shimla

By order,
(AJAY MITTAL)
Additional Chief Secretary.

**In the Court of Dr. Jitender Kanwar, HPAS, Sub Divisional Magistrate Bharmour,
District Chamba (H. P.)**

Shri Bantu Ram s/o Shri Dheeraj Ram, Village Malkouta, P.O. & Tehsil Bharmour, District Chamba, H. P. . . *Applicant*

Versus

General Public

Proclamation under order 5, Rule 20, C.P.C, under Section 13(3) of the Births and Deaths Registration Act, 1969.

Whereas, Shri Bantu Ram s/o Shri Dheeraj Ram, Village Malkouta, P.O. & Tehsil Bharmour, District Chamba, H. P. has filed an application alongwith an affidavit regarding the registration of his Date of Birth 09-05-1990 for entry in the record of Gram Panchayat Sanchuine, Development Block Bharmour, Tehsil Bharmour, District Chamba H.P., thereof.

Hence, this proclamation is issued to the General Public, that if they have any objection/claim regarding the registration of his date of birth for entry in the concerned Gram Panchayat Sanchuine i.e. 09-05-1990 they may file their claim/objections on or before 15-03-2016 in this court failing which necessary orders will be passed to the concerned Gram Panchayat for registration of date of Birth accordingly.

Given today under my signature and seal of the Court.

Seal.

Dated : 8-2-2016

Sd/-

*Sub Divisional Magistrate,
Bharmour, District Chamba (H.P.).*

ब अदालत श्री ठाकर दास, कार्यकारी दण्डाधिकारी थुरल, जिला कांगड़ा, हि० प्र०

मुकदमा नं० :2016

तारीख पेशी : 18-03-2016

श्री प्रवेश कुमार पुत्र श्री रुस्तम सिंह, निवासी गांव दरिढ, डाकघर सन्हूं उप-तहसील थुरल, ग्राम पंचायत सन्हूं जिला कांगड़ा, हि० प्र० प्रार्थी।

बनाम

आम जनता

प्रतिवादी।

विषय.—जन्म व मृत्यु पंजीकरण अधिनियम, 1969 की धारा 13-3 के तहत जन्म पंजीकरण हेतु प्रार्थना—पत्र।

इश्तहार अखबारी व मुस्त्री मुनादी:-

प्रार्थी श्री प्रवेश कुमार पुत्र श्री रुस्तम सिंह, निवासी गांव दरिढ, डाकघर सन्हूं उप-तहसील थुरल, ग्राम पंचायत सन्हूं जिला कांगड़ा, हि० प्र० ने इस अदालत में प्रार्थना—पत्र मय व्यान हल्फी पेश किया व आवेदन किया कि उसका जन्म दिनांक 22-03-1991 को गांव सन्हूं में हुआ है परन्तु अज्ञानतावश उसके जन्म का पंजीकरण स्थानीय ग्राम पंचायत अभिलेख में न करवाया गया है। अतः इस न्यायालय से अपने जन्म पंजीकरण करने का आदेश ग्राम पंचायत सन्हूं को जारी करवाना चाहता है।

अतः प्रार्थी का आवेदन स्वीकार करते हुए, इस इश्तहार मुस्त्री मुनादी द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति या संस्था को उक्त प्रवेश कुमार की जन्म तिथि 22-03-1991 के पंजीकरण बारे कोई उजर एवं एतराज हो तो वह असालतन या वकालतन तारीख पेशी 18-03-2016 को हाजिर अदालत हो अपना उजर व एतराज पेश कर सकता है। बाद तारीख पेशी किसी किस्म का उजर एवं एतराज नहीं सुना जावेगा व उपरोक्त की जन्म तिथि 22-03-1991 के पंजीकरण करने का आदेश उप स्थानीय पंजीकार जन्म व मृत्यु ग्राम पंचायत सन्हूं को पारित कर दिया जाएगा।

ये इश्तहार मेरे हस्ताक्षर व मोहर अदालत से आज दिनांक 06-02-2016 को जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
थुरल, जिला कांगड़ा।

ब अदालत नायब तहसीलदार व अखत्यारात सहायक समाहर्ता द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी,
तहसील धर्मशाला, जिला कांगड़ा

श्री अशोक कुमार

बनाम

आम जनता

विषय.—प्रार्थना—पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता।

श्री अशोक कुमार पुत्र श्री वाला नन्द, निवासी चतेहड़, तहसील धर्मशाला, जिला कांगड़ा ने इस अदालत में शपथ—पत्र सहित मुकदमा दायर किया है कि उसकी पुत्री मन्जू की जन्म दिनांक 03—09—2002 है परन्तु कैन्ट बोर्ड योल में जन्म पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त मन्जू का जन्म पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 9—3—16 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ—पत्र जन्म तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 10—2—16 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
धर्मशाला।

ब अदालत नायब तहसीलदार व अखत्यारात सहायक समाहर्ता द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी,
तहसील धर्मशाला, जिला कांगड़ा

श्री गुरमीत सिंह

बनाम

आम जनता

विषय.—प्रार्थना—पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता।

श्री गुरमीत सिंह पुत्र श्री हरनाम सिंह, निवासी चतेहड़, तहसील धर्मशाला, जिला कांगड़ा ने इस अदालत में शपथ—पत्र सहित मुकदमा दायर किया है कि उसकी पुत्री हरप्रीत कौर ठुकराल की जन्म दिनांक 13—07—1992 है परन्तु कैन्ट बोर्ड योल में जन्म पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त हरप्रीत कौर ठुकराल का जन्म पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 9—3—16 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ—पत्र जन्म तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 10—2—16 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
धर्मशाला।

ब अदालत श्री मुकेश शर्मा, सहायक समाहर्ता द्वितीय श्रेणी, रामपुर बुशैहर, जिला शिमला (हि० प्र०)

मु० नं० : 20 / 2016

तारीख दायर : 15—02—2016

श्री राजेन्द्र सिंह पुत्र श्री भगवान दास, निवासी गांव नन्ती, डॉ फांचा, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०) प्रार्थी।

बनाम

1. श्री भगवान दास पुत्र श्री राम सिंह, निवासी गांव नन्ती, डॉ फांचा, तहसील रामपुर बुशैहर, जिला शिमला, हि० प्र०,
2. आम जनता प्रतिवादीगण।

प्रार्थना—पत्र मकफूद—उल—खबरी इन्तकाल अराजी खाता/खतौनी नं० 15/39, कित्ता 19, रकबा तादादी 02—63—36 है०, वाका चक नन्ती, 15/20 तहसील रामपुर बुशैहर, जिला शिमला, हि० प्र०।

नोटिस बनाम आम जनता।

श्री राजेन्द्र सिंह पुत्र श्री भगवान दास, निवासी गांव नन्ती, डॉ फांचा, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०) ने इस अदालत में प्रार्थना—पत्र मय शपथ—पत्र गुजारा है कि प्रार्थी के पिता भगवान दास पुत्र राम सिंह, निवासी नन्ती, तहसील रामपुर बुशैहर, जिला शिमला, हि० प्र० जो वर्ष 2000 से घर से लापता है तथा तब से आवेदक के पिता भगवान दास का कोई पता न चला है। न ही उसकी कोई भी चिट्ठी पत्र आई है। इस बारे आवेदक ने वर्ष 2000 में पुलिस चौकी ज्यूरी में प्राथमिक रिपोर्ट दर्ज करवाई। श्री भगवान दास अराजी खाता/खतौनी नं० 15/39, कित्ता 19, रकबा तादादी 02—63—36 है० वाका चक नन्ती 15/20, तहसील रामपुर बुशैहर, जिला शिमला, हि० प्र० में मालिक दर्ज कागजात माल है। आवेदक मकफूद—उल—खबरी का इन्तकाल वारसान के नाम तस्दीक करवाना चाहता है।

अतः इस इश्तहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त आवेदक के पिता भगवान दास के जायज वारसान के नाम मकफूद—उल—खबरी इन्तकाल तस्दीक करने वारे किसी प्रकार का कोई उजर या एतराज हो तो दिनांक 15—03—2016 को या इससे पूर्व अदालत हजा में हाजिर आकर अपनी आपत्ति दर्ज करवा सकता है। बाद गुजरने मियाद कोई भी उजर/एतराज काबिले समायत न होगा तथा नियमानुसार उपरोक्त राजस्व अभिलेख में भगवान दास के जायज वारसान के नाम मकफूद—उल—खबरी इन्तकाल तस्दीक करने के आदेश पारित किए जाएंगे।

आज दिनांक 15—02—2016 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

मुकेश शर्मा,
सहायक समाहर्ता द्वितीय श्रेणी,
रामपुर बुशैहर, जिला शिमला (हि० प्र०)।

ब अदालत श्री मुकेश शर्मा, सहायक समाहर्ता द्वितीय श्रेणी, रामपुर बुशैहर, जिला शिमला (हि० प्र०)

मु० नं० : 21/2016

तारीख दायर : 15-02-2016

श्री कर्म चन्द पुत्र श्री सुरम दास, निवासी गांव सुरु, डा० सुरु, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०) प्रार्थी।

बनाम

1. श्रीमती सुपन दासी पुत्री श्री सुरम दास, निवासी गांव सुरु, डा० सुरु, तहसील रामपुर बुशैहर, जिला शिमला, हि० प्र०

2. आम जनता प्रतिवादीगण।

प्रार्थना—पत्र मकफूद—उल—खबरी इन्तकाल अराजी खाता/खतौनी नं० 29/128 ता 129, कित्ता 16, रकबा तादादी 01-14-56 है०, वाका चक सुरु, तहसील रामपुर बुशैहर, जिला शिमला, हि० प्र०।

नोटिस बनाम आम जनता।

श्री कर्म चन्द पुत्र श्री सुरम दास, निवासी गांव सुरु, डा० सुरु, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०) ने इस अदालत में प्रार्थना—पत्र मय शपथ—पत्र गुजारा है कि प्रार्थी की बहन श्रीमती सुपन दासी पुत्री श्री सुरम दास लगभग 40 वर्ष पहले घर से लापता हो गई है, और तलाश करने पर उसका कोई पता नहीं चला है, न ही उसकी काई भी चिट्ठी पत्र आई है। श्रीमती सुपन दासी अराजी खाता/खतौनी नं० 29/128 ता 129, कित्ता 16, रकबा तादादी 01-14-56 है०, वाका चक सुरु, तहसील रामपुर बुशैहर, जिला शिमला, हि० प्र० में मालिक दर्ज कागजात माल है। आवेदक श्रीमती सुपन दासी के वारसान के नाम मकफूद—उल—खबरी का इन्तकाल तसदीक करवाना चाहता है।

अतः इस इश्तहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त आवेदक की बहन श्रीमती सुपन दासी के जायज वारसान के नाम मकफूद—उल—खबरी इन्तकाल तसदीक करने बारे किसी प्रकार का कोई उजर या एतराज हो तो दिनांक 15-03-2016 को या इससे पूर्व अदालत हजा में हाजिर आकर अपनी आपत्ति दर्ज करवा सकता है। बाद गुजरने मियाद कोई भी उजर/एतराज काबिले समायत न होगा तथा नियमानुसार उपरोक्त राजस्व अभिलेख में सुपन दासी के जायज वारसान के नाम मकफूद—उल—खबरी इन्तकाल तसदीक करने के आदेश पारित किए जाएंगे।

आज दिनांक 15-02-2016 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

मुकेश शर्मा,
सहायक समाहर्ता द्वितीय श्रेणी,
रामपुर बुशैहर, जिला शिमला (हि० प्र०)।

ब अदालत श्री मुकेश शर्मा, सहायक समाहर्ता द्वितीय श्रेणी, रामपुर बुशैहर, जिला शिमला (हि० प्र०)

मु० नं० : 22/2016

तारीख दायर : 15-02-2016

1. श्रीमती लीलमा देवी पुत्री स्व० श्री सेवा राम उपनाम शीशी राम, निवासी गांव कान्धार, डा० सरपारा, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०),

2. श्रीमती टूलमा देवी पुत्री स्व0 श्री सेवा राम उपनाम शीशी राम, निवासी गांव कान्धार, डा0 सरपारा, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0),
 3. श्रीमती सीता देवी पुत्री स्व0 श्री सेवा राम उपनाम शीशी राम, निवासी गांव कान्धार, डा0 सरपारा, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0),
 4. श्रीमती दिला देवी पुत्री स्व0 श्री सेवा राम उपनाम शीशी राम, निवासी गांव कान्धार, डा0 सरपारा, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0),
 5. श्रीमती सरला देवी पुत्री स्व0 श्री सेवा राम उपनाम शीशी राम, निवासी गांव कान्धार, डा0 सरपारा, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0)
- वादीगण

बनाम

आम जनता

प्रतिवादी

प्रार्थना—पत्र नाम दरुस्ती अराजी खाता/खतौनी नं0 32/90, 102, कित्ता 51, रकबा तादादी 03-71-46 है0, वाका उप—महाल कान्धार, 15/20, तहसील रामपुर बुशैहर, जिला शिमला, हि0 प्र0।

नोटिस बनाम आम जनता।

श्रीमती लीलमा देवी पुत्री स्व0 श्री सेवा राम उपनाम शीशी राम आदि गांव कान्धार, डा0 सरपारा, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0) ने इस अदालत में प्रार्थना—पत्र मय शपथ—पत्र गुजारा है कि प्रार्थिया के पिता का नाम अराजी खाता/खतौनी नं0 32/90, 102, कित्ता 51, रकबा तादादी 03-71-46 है0 वाका उप—मुहाल कान्धार, तहसील रामपुर बुशैहर, जिला शिमला, हि0 प्र0 के खाना मालिक में शीशी राम पुत्र देवी नन्द दर्ज है जो सही नहीं है जबकि आवेदिका के पिता का सही नाम सेवा राम पुत्र देवी नन्द दर्ज है, जिसकी पुष्टि हेतु आवेदिका ने शपथ—पत्र संलग्न आवेदन कर रखा है। वादीगण अपने पिता का नाम उपरोक्त अराजी के खाना मालिक में शीशी राम पुत्र देवी नन्द के स्थान पर शीशी राम उर्फ सेवा राम पुत्र देवी नन्द करुस्त करवाना चाहती है।

अतः इस इश्तहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त वादीगण के पिता का नाम उपरोक्त अराजी के खाना मालिक में शीशी राम पुत्र देवी नन्द के स्थान पर शीशी राम पुत्र देवी नन्द उर्फ सेवा राम पुत्र देवी नन्द दर्ज करने बारा कोई उजर या एतराज है तो वह दिनांक 15-03-2016 को या इससे पूर्व अदालत हजा में आकर अपनी आपत्ति दर्ज करवा सकता है। बाद गुजरने मियाद कोई भी उजर/एतराज काबिले समायत न होगा तथा नियमानुसार राजस्व अभिलेख में वादीगण के पिता का नाम दरुस्त करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 15-02-2016 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
रामपुर बुशैहर, जिला शिमला (हि0 प्र0)।

ब अदालत श्री मुकेश शर्मा, सहायक समाहर्ता द्वितीय श्रेणी, रामपुर बुशैहर, जिला शिमला (हि0 प्र0)

मु0 नं0 : 23/2016

तारीख दायर : 15-02-2016

श्रीमती नूरमा देवी पत्नी स्व0 श्री मंगत राम, निवासी गांव सुरु, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0)

प्रार्थिया।

बनाम

आम जनता

प्रतिवादी

प्रार्थना—पत्र नाम दरुस्ती अराजी खाता/खतौनी नं० 33/157, कित्ता 5, रकबा तादादी 0—18—13 है०, वाका चक सुरु, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०)।

नोटिस बनाम आम जनता।

श्रीमती नूरमा देवी पत्नी स्व० श्री मंगत राम, निवासी गांव सुरु, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०) ने इस अदालत में प्रार्थना—पत्र मय शपथ—पत्र गुजारा है कि प्रार्थिया की पुत्री का नाम नेहा मुताबिक ग्राम पंचायत अभिलेख सही व दरुस्त है जिसकी पुष्टि हेतु आवेदिका ने नकल परिवार रजिस्टर व शपथ—पत्र संलग्न आवेदन पत्र कर रखे हैं। अराजी खाता/खतौनी नं० 33/157, कित्ता 5, रकबा तादादी 0—18—13 है०, वाका चक सुरु, तहसील रामपुर बुशैहर के खाना मालिक में आवेदिका की पुत्री का नाम कुमारी शिशु दर्ज है जो सही नहीं है। आवेदिका अपनी पुत्री का नाम उपरोक्त अराजी के खाना मालिक में शिशु के स्थान पर नेहा दरुस्त दर्ज करवाना चाहती है।

अतः इस इश्तहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त आवेदिका की पुत्री का नाम अराजी उपरोक्त के खाना मालिक में शिशु के स्थान पर नेहा दरुस्त दर्ज करने बारा कोई उजर या एतराज है तो वह दिनांक 15—03—2016 को या इससे पूर्व अदालत हजा में आकर अपनी आपत्ति दर्ज करवा सकता है। बाद गुजरने मियाद कोई भी उजर/एतराज काबिले समायत न होगा तथा नियमानुसार राजस्व अभिलेख में आवेदिका की पुत्री का नाम दरुस्त करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 15—02—2016 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

मुकेश शर्मा,
सहायक समाहर्ता द्वितीय श्रेणी,
रामपुर बुशैहर, जिला शिमला (हि० प्र०)।

ब अदालत श्री मुकेश शर्मा, सहायक समाहर्ता द्वितीय श्रेणी, रामपुर बुशैहर, जिला शिमला (हि० प्र०)

मु० नं० : 24/2016

तारीख दायर : 15—02—2016

श्रीमती रुकमणि पुत्री श्री वूलू राम, निवासी गांव लवाना सदाना, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०) प्रार्थिया।

बनाम

आम जनता

प्रतिवादी

प्रार्थना—पत्र नाम दरुस्ती अराजी खाता/खतौनी नं० 2/3, कित्ता 3, रकबा तादादी 0—06—24 है०, व खाता/खतौनी नं० 38/113, खसरा नं० 736, रकबा तादादी 0—01—33 है० वाका चक जुली कोट, 15/20, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०)।

नोटिस बनाम आम जनता।

श्रीमती रुकमणि पुत्री श्री वूलू राम, निवासी गांव लवाना सदाना, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०) ने इस अदालत में प्रार्थना—पत्र मय शपथ—पत्र गुजारा है कि प्रार्थिया का नाम अराजी खाता/

खतौनी नं 0 2 / 3, कित्ता 3, रकबा तादादी 0-06-24 है 0, व खाता / खतौनी नं 0 38 / 113, खसरा नं 0 736, रकबा तादादी 0-01-33 है 0 वाका चक जुली कोट, 15 / 20, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०) के खाना मालिक में रकमू दर्ज है जो सही नहीं है। जबकि आवेदिका का सही नाम रुकमणि है जिसकी पुष्टि हेतु आवेदिका ने नकल परिवार रजिस्टर, पहचान-पत्र व आधार कार्ड संलग्न आवेदन कर सखे हैं जिसमें आवेदिका का सही नाम रुकमणि दर्शाया गया है। आवेदिका अपना नाम उपरोक्त अराजी के खाना मालिक में रकमू के स्थान पर रुकमणि दरुस्त दर्ज करवाना चाहती है।

अतः इस इश्तहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त आवेदिका का नाम उपरोक्त अराजी के खाना मालिक में रकमू के स्थान पर रुकमणि दरुस्त दर्ज करने बारा कोई उजर या एतराज है तो वह दिनांक 15-03-2016 को या इससे पूर्व अदालत हजा में आकर अपनी आपत्ति दर्ज करवा सकता है। बाद गुजरने मियाद कोई भी उजर/एतराज काबिले समायत न होगा तथा नियमानुसार राजस्व अभिलेख में आवेदिका का नाम दरुस्त करने के आवेश पारित कर दिए जाएंगे।

आज दिनांक 15-02-2016 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

मुकेश शर्मा,
सहायक समाहर्ता द्वितीय श्रेणी,
रामपुर बुशैहर, जिला शिमला (हि० प्र०)।

ब अदालत श्री मुकेश शर्मा, सहायक समाहर्ता द्वितीय श्रेणी, रामपुर बुशैहर, जिला शिमला (हि० प्र०)

मु० नं 0 : 25 / 2016

तारीख दायर : 15-02-2016

श्री ज्योती प्रकाश पुत्र स्व० श्री पिनू निवासी गांव शीन्ती, डा० गानवी, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०) प्रार्थी।

बनाम

आम जनता

प्रतिवादी

प्रार्थना-पत्र नाम दरुस्ती अराजी खाता / खतौनी नं 0 52, चक मोलगी, खाता नं 0 68, उप-महाल जघोरी, खाता नं 0 122, 125, 126, 127, वाका चक गानवी, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०)।

नोटिस बनाम आम जनता।

श्री ज्योती प्रकाश पुत्र स्व० श्री पिनू निवासी गांव शीन्ती, डा० गानवी, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०) ने इस अदालत में प्रार्थना-पत्र मय शपथ-पत्र गुजारा है कि प्रार्थी का नाम अराजी खाता / खतौनी नं 0 52, चक मोलगी, खाता नं 0 68, उप-महाल जघोरी, खाता नं 0 122, 125, 126, 127, वाका चक गानवी, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०) के खाना मालिक में कांशी राम दर्ज है जो सही नहीं है। जबकि आवेदक का सही नाम ज्योती प्रकाश है जिसकी पुष्टि हेतु आवेदक ने नकल परिवार रजिस्टर, व शपथ-पत्र संलग्न आवेदन कर सखे हैं जिसमें प्रार्थी का सही नाम ज्योती प्रकाश दर्शाया गया है। आवेदक अपना नाम उपरोक्त अराजी के खाना मालिक में कांशी राम के स्थान पर ज्योती प्रकाश दरुस्त दर्ज करवाना चाहता है।

अतः इस इश्तहार द्वारा सर्व साधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त आवेदक का नाम उपरोक्त अराजी के खाना मालिक में कांशी राम के स्थान पर ज्योती प्रकाश दरुस्त दर्ज

करने बारा कोई उजर या एतराज है तो वह दिनांक 15–03–2016 को या इससे पूर्व अदालत हजा में आकर अपनी आपत्ति दर्ज करवा सकता है। बाद गुजरने मियाद कोई भी उजर/एतराज काबिले समायत न होगा तथा नियमानुसार राजस्व अभिलेख में आवेदक का नाम दरुस्त करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 15–02–2016 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

मुकेश शर्मा,
सहायक समाहर्ता द्वितीय श्रेणी,
रामपुर बुशैहर, जिला शिमला (हि० प्र०)।

ब अदालत श्री मुकेश शर्मा, कार्यकारी दण्डाधिकारी, रामपुर बुशैहर, जिला शिमला (हि० प्र०)

मु० नं० : 26/2016

तारीख दायर : 15–02–2016

श्री प्रेम दास पुत्र श्री यशपाल, निवासी गांव बधाल, डा० ज्यूरी, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०) प्रार्थी

बनाम

आम जनता

प्रतिवादी

प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता।

श्री प्रेम दास पुत्र श्री यशपाल, निवासी गांव बधाल, डा० ज्यूरी, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०) ने इस अदालत में प्रार्थना—पत्र मय शपथ—पत्र गुजारा है कि प्रार्थी की पुत्री ज्योती जन्म तिथि 19–11–1999 का इन्द्राज स्थानीय पंचायत अभिलेख बधाल में दर्ज नहीं है। प्रार्थी अपनी पुत्री का नाम पंचायत अभिलेख बधाल में दर्ज करवाना चाहता है।

अतः इस इश्तहार द्वारा सर्वसाधारण को सूचित किया जाता है कि किसी व्यक्ति को उपरोक्त आवेदक की पुत्री का नाम व जन्म तिथि का इन्द्राज पंचायत अभिलेख बधाल में दर्ज करने बारा कोई उजर या एतराज है, तो वह दिनांक 15–03–2016 को या इससे पूर्व अदालत हजा में हाजर आकर अपनी आपत्ति दर्ज करवा सकता है। बाद गुजरने मियाद कोई भी उजर/एतराज काबिले समायत न होगा तथा नियमानुसार पंचायत अभिलेख में आवेदक की पुत्री का नाम व जन्म तिथि दर्ज करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 15–02–2016 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

मुकेश शर्मा,
कार्यकारी दण्डाधिकारी,
रामपुर बुशैहर, जिला शिमला (हि० प्र०)।

ब अदालत श्री मुकेश शर्मा, कार्यकारी दण्डाधिकारी, रामपुर बुशैहर, जिला शिमला (हि० प्र०)

मु० नं० : 27/2016

तारीख दायर : 15–02–2016

श्रीमती कमलेश कुमारी पुत्री श्री गोपाल चन्द, निवासी गांव डवारच, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०) प्रार्थिया।

आम जनता

प्रतिवादी

प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत नाम दरुस्ती।

नोटिस बनाम आम जनता।

श्रीमती कमलेश कुमारी पुत्री श्री गोपाल चन्द, निवासी गांव डवारच, तहसील रामपुर बुशैहर, जिला शिमला (हि० प्र०) ने इस अदालत में प्रार्थना—पत्र मय शपथ—पत्र गुजारा है कि आवेदिका के पुत्र का नाम पंचायत अभिलेख त्यावल—ज्योरी में खड़का सिंह दर्ज है जो सही नहीं है, जबकि प्रार्थिया के पुत्र का सही नाम शरण कुमार है जिसकी पुष्टि हेतु प्रार्थिया ने स्कूल प्रमाण—पत्र, अमर उजाला में जारी इश्तहार व शपथ—पत्र संलग्न आवेदन—पत्र कर रखे हैं। प्रार्थिया अपने पुत्र का नाम स्थानीय पंचायत अभिलेख में खड़का सिंह के स्थान पर शरण कुमार दरुस्त/दर्ज करवाना चाहती है।

अतः इस इश्तहार द्वारा सर्वसाधारण को सूचित किया जाता है कि किसी व्यक्ति को उपरोक्त आवेदिका के पुत्र का नाम व जन्म तिथि स्थानीय पंचायत अभिलेख में खड़का सिंह के स्थान पर शरण कुमार दरुस्त करने बारा कोई उजर या एतराज है, तो वह दिनांक 15—03—2016 को या इससे पूर्व अदालत हजा में हाजर आकर अपनी आपत्ति दर्ज करवा सकता है। बाद गुजरने मियाद कोई भी उजर/एतराज काबिले समायत न होगा तथा नियमानुसार पंचायत अभिलेख में आवेदिका के पुत्र का नाम दरुस्त करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 15—02—2016 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

मुकेश शर्मा,
कार्यकारी दण्डाधिकारी,
रामपुर बुशैहर, जिला शिमला (हि० प्र०)।

ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी, ऊना, तहसील व जिला ऊना (हि० प्र०)

नोटिस बनाम :—जनता आम

सोहन लाल

बनाम

आम जनता

दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969.

श्री सोहन लाल पुत्र स्व० श्री झल्ला राम, निवासी झुड़ोवाल, तहसील ऊना, जिला ऊना ने इस अदालत में दरखास्त दी है कि उसकी माता जी स्व० श्रीमती लक्ष्मी देवी की मृत्यु गांव झुड़ोवाल में दिनांक 03—01—2006 को हुई थी, परन्तु इस बारे पंचायत के रिकॉर्ड में पंजीकरण नहीं करवाया जा सका। अब पंजीकरण करने के आदेश दिए जाएं।

अतः इस नोटिस के माध्यम से सर्व—साधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त मृत्यु के पंजीकरण होने बारे कोई उजर/एतराज हो तो वह दिनांक 12—03—2016 को प्रातः दस बजे अधोहस्ताक्षरी के समक्ष असालतन/वकालतन हाजिर आकर पेश कर सकता है। अन्यथा उपरोक्त मृत्यु का पंजीकरण करने के आदेश दे दिए जाएंगे।

आज दिनांक 12-02-2016 को हस्ताक्षर मेरे व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
ऊना, जिला ऊना (हि० प्र०)।

न्यायालय तहसीलदार एवं कार्यकारी दण्डाधिकारी, ऊना, जिला ऊना (हि० प्र०)

दावा संख्या : / Teh. Una/M. Reg./20.....

श्री हेम राज पुत्र श्री कशमीर सिंह, जात सैणी, गांव रामपुर, डा० ऊना, तहसील ऊना, जिला ऊना (हि० प्र०)।

बनाम

आम जनता

दावा अन्तर्गत धारा 8(4) विवाह पंजीकरण अधिनियम, 1996.

उपरोक्त मुकदमा उनवान वाला में श्री हेम राज पुत्र श्री कशमीर सिंह, जात सैणी, गांव रामपुर, डा० ऊना, तहसील ऊना, जिला ऊना (हि० प्र०) ने इस न्यायालय में प्रार्थना—पत्र प्रस्तुत किया है कि उसका विवाह दिनांक 19-04-2013 को श्रीमती संगीता पुत्री श्री लक्ष्मण नेगी, जात नेगी, गांव रामपुर, डाकघर रामपुर, तहसील रामपुर, जिला शिमला (हि० प्र०) के साथ हुआ है। लेकिन अज्ञानता के कारण अपने विवाह का इन्द्राज स्थानीय रजिस्ट्रार विवाह पंजीकरण रामपुर, तहसील ऊना, जिला ऊना (हि०प्र०) में न करवा सका।

अतः इस सन्दर्भ में आम जनता को सूचित किया जाता है कि उपरोक्त वर्णित के विवाह का इन्द्राज रजिस्ट्रार विवाह स्थानीय पंजीकरण रामपुर, तहसील ऊना, जिला ऊना (हि० प्र०) में दर्ज करवाने बारे किसी को एतराज हो तो वह दिनांक 11-03-2016 को इस न्यायालय में उपस्थित होकर प्रस्तुत कर सकता है, अन्यथा इसके बाद उक्त वर्णित विवाह के पंजीकरण हेतु आगामी कार्यवाही अमल में लाई जायेगी। इसके बाद कोई भी एतराज काबले समायत न होगा।

आज दिनांक 11-02-2016 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
ऊना, जिला ऊना (हि० प्र०)।

न्यायालय तहसीलदार एवं कार्यकारी दण्डाधिकारी, ऊना, जिला ऊना (हि० प्र०)

दावा संख्या : / Teh. Una/M. Reg./20.....

श्री संजीव कुमार पुत्र श्री राम सवरूप, जात ब्राह्मण, गांव मैहतपुर, डा० मैहतपुर, तहसील ऊना, जिला ऊना (हि० प्र०)।

बनाम

आम जनता

दावा अन्तर्गत धारा 8(4) विवाह पंजीकरण अधिनियम, 1996.

उपरोक्त मुकदमा उनवान वाला में श्री संजीव कुमार पुत्र श्री राम सवरूप, जात ब्राह्मण, गांव मैहतपुर, डा० मैहतपुर, तहसील ऊना, जिला ऊना (हि० प्र०) ने इस न्यायालय में प्रार्थना-पत्र प्रस्तुत किया है कि उसका विवाह दिनांक 25-02-2012 को श्रीमती कविता रानी पुत्री श्री बाल कृष्ण, जात ब्राह्मण, गांव गढ़शंकर, डाकघर गढ़शंकर, तहसील गढ़शंकर, जिला होशियारपुर (पंजाब) के साथ हुआ है। लेकिन अज्ञानता के कारण अपने विवाह का इन्द्राज स्थानीय रजिस्ट्रार विवाह पंजीकरण मैहतपुर, तहसील ऊना, जिला ऊना (हि०प्र०) में न करवा सका।

अतः इस सन्दर्भ में आम जनता को सूचित किया जाता है कि उपरोक्त वर्णित के विवाह का इन्द्राज रजिस्ट्रार विवाह स्थानीय पंजीकरण मैहतपुर, तहसील ऊना, जिला ऊना (हि० प्र०) में दर्ज करवाने बारे किसी को एतराज हो तो वह दिनांक 12-03-2016 को इस न्यायालय में उपस्थित होकर प्रस्तुत कर सकता है, अन्यथा इसके बाद उक्त वर्णित विवाह के पंजीकरण हेतु आगामी कार्यवाही अमल में लाई जायेगी। इसके बाद कोई भी एतराज काबले समायत न होगा।

आज दिनांक 12-02-2016 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/-
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
ऊना, जिला ऊना (हि० प्र०)।